
Appeal Decision

Site visit made on 28 October 2025

by **A Wright BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12th November 2025

Appeal Ref: APP/X1545/W/25/3370476

Land adjacent 23 Rectory Road, North Fambridge, Essex

- 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 P and J Friedlein against the decision of Maldon District Council.
 - The application Ref is 25/00015/OUT.
 - The development proposed is an outline application with all matters reserved for the erection of 3no. dwellings.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Outline planning permission is sought, with all matters reserved. I have determined the appeal on this basis.
3. The address of the appeal site given on the planning application form is 'Land to the south of Rectory Road, North Fambridge'. However, the appeal form and decision notice cite the address as 'Land adjacent 23 Rectory Road, North Fambridge, Essex' which I have used in the banner above as this is a more accurate description of the address.

Main Issues

4. The main issues in this appeal are:
 - whether the site would be a suitable location for housing, having regard to the provisions of the development plan and the accessibility of services and facilities;
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on protected species, with particular regard to bats and badgers; and
 - whether the proposed scheme would meet the statutory requirements for the provision of biodiversity net gain.

Reasons

Suitability of the location

5. Policy S1 of the Maldon District Local Development Plan 2014 – 2029 (LDP) aims to deliver housing to meet needs in the most sustainable locations. The LDP sets

out a settlement hierarchy to inform the location of strategic growth, with North Fambridge identified as a smaller village due to the limited services, public transport and employment opportunities available.

6. North Fambridge has a defined settlement boundary within which Policy S8 of the LDP supports sustainable development. However, the appeal site lies adjacent to but outside this boundary in the countryside. The proposal is for market housing which does not fall within any types of development allowed in the countryside by Policy S8. As such, the proposed scheme would be contrary to the Council's spatial strategy.
7. Amongst other things, Policies S1 and T2 of the LDP direct homes to the most sustainable locations and require developments to provide safe and direct walking and cycling routes to nearby services and public transport where appropriate.
8. North Fambridge railway station is a short walk away, providing train links to nearby settlements, including South Woodham Ferrers, Southminster, Burnham-on-Crouch and Wickford, with peak hour rail services to London. There are also some bus stops close by, though bus services are relatively infrequent. The railway station and bus stops are accessible from the site via unlit footways. There is a green space on Rectory Road and other facilities on the other side of North Fambridge, including a public house, children's nursery, nature reserve and marinas. However, there is no substantive evidence that services to meet daily needs, such as schools and shops, are located nearby.
9. Indeed, in considering a previous appeal for a similar scheme on the appeal site¹, the Inspector found that given the distances to larger settlements and the need to traverse unlit country lanes, it is unlikely that walking to these settlements would be a reasonable alternative for most day-to-day trips. As such, it was found that the appeal site could not be considered a sustainable location.
10. Conversely, when considering housing proposals for sites at Stephenson Road on the other side of the railway², the Council and an Inspector found that given their proximity to public transport, future occupiers would not be heavily reliant on the use of private cars to access everyday facilities. The Council has also approved housing proposals outside other defined settlement boundaries on sites that were more remote from facilities than those at North Fambridge.
11. The use of trains and buses to access services and employment would be an option for some trips by some people. However, the unlit nature of the route to the station and bus stops and the distance to facilities would limit their attractiveness, particularly for older people, those with reduced mobility or with children and at times of darkness and bad weather. Thus, consistent with the Inspector's findings on the previous scheme for the site, future occupiers of the proposed dwellings would be likely to be reliant on private vehicles to access services.
12. The provision of electric vehicle charging points would encourage the use of electric vehicles by future occupiers, and deliveries of goods could reduce the number of journeys made by them. Nevertheless, these factors would not prevent future residents relying on private motor vehicles to access services, and there would be trips to and from the site by delivery vehicles.

¹ Appeal ref APP/X1545/W/24/3339304 'the previous scheme'

² Appeal ref APP/X1545/W/24/3349937 and planning application refs 22/00734/OUT and 23/00201/OUT

13. Therefore, I conclude that the site would not be a suitable location for housing, having regard to the provisions of the development plan and the accessibility of services and facilities. In this respect, it would fail to comply with Policies S1, S8 and T2 of the LDP.

Character and appearance

14. The appeal site largely comprises a relatively flat paddock between the railway line and Rectory Road. There are rows of detached houses and a metalled road with footways along much of Rectory Road which gives that part of the street a suburban character. This ends abruptly with paddocks on one side and agricultural buildings and the Ruxley Cottage farmhouse on the other, where the road becomes a narrow, unsealed track used as a bridleway, giving the site and area beyond the village edge a rural, undeveloped character. There is some established planting along the railway and boundaries which contain the site, though there is a more open aspect to the adjacent house.
15. The proposal is for three dwellings which could be designed and sited to reflect the local vernacular and maintain visual separation between Ruxley Cottage and the more suburban development along Rectory Road. However, the appeal scheme would introduce built development outside the defined settlement boundary, causing incremental erosion into the rural area. The introduction of houses, hardsurfacing for vehicular access and parking, and residential paraphernalia would result in significant urbanisation of this part of Rectory Road, giving it a domestic appearance and adversely affecting its rural, undeveloped character.
16. The proposed development would be contained by the railway line and boundary planting. The appellants indicate that landscaping could enhance the rural edge and preserve countryside character, but this is a reserved matter and there are no details before me in respect of this. Even with enhanced planting, the proposal would be clearly visible through access points onto the track, with its domestic, urban character appearing incongruous in views from the bridleway.
17. For the previous scheme, the Council did not dispute that the site could accommodate the three proposed dwellings without causing significant harm to the character and appearance of the locality. Nevertheless, the Council is concerned about the impact of the current proposal on countryside character, and I have found that it would cause adverse effects in this regard.
18. Consequently, I conclude that the proposal would harm the character and appearance of the area. This would be contrary to Policies S1, S8 and D1 of the LDP which seek to maintain rural character and protect the intrinsic character and beauty of the countryside, amongst other things.

Protected Species

19. Bats are a European Protected Species protected under the Conservation of Habitats and Species Regulations 2017. Badgers and their setts are protected by the Protection of Badgers Act 1992. Both species are also protected under the Wildlife and Countryside Act 1981.
20. ODPM Circular 06/2005 states that the presence of protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It further states that it is

essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. BS 42020:2013 'Biodiversity – Code of practice for planning and development' states that ecological information should be sufficiently up to date.

21. An ecological walkover survey was carried out by the appellants' ecologist on 17 April 2023, and the results informed the Preliminary Ecological Appraisal May 2023 (PEA). This included an assessment of the site's potential to support any legally protected species, including a preliminary roost assessment for bats. At that time, it found that there were no trees on or adjacent to the site with potential bat roost features but that low numbers of foraging bats may use the site, particularly around the established vegetation and railway line to the south. It contains recommendations relating to proposed lighting to ensure bat foraging and commuting behaviour is maintained.
22. The initial site walkover survey was undertaken over two years ago and mobile protected species, such as badgers and roosting bats, could now be present since the last survey. However, no updated ecological information has been submitted in relation to the validity of the PEA, which surveys may need to be updated, and the scope, timing and methods of the update surveys. In the absence of this information, the presence of badgers and roosting bats cannot be ruled out and I cannot be certain as to the extent to which they may be affected. Furthermore, if protected species were affected, I cannot be certain as to what mitigation if appropriate, in addition to bat-friendly lighting, may be required.
23. Thus, I conclude that there has been a failure to demonstrate that the proposal would not harm protected bats and badgers. This would conflict with Policies S1, D1, N1 and N2 of the LDP where they seek to protect biodiversity, including protected species.

Biodiversity Net Gain

24. There is now a requirement under the Town and Country Planning Act 1990 for developments to provide 10% biodiversity net gain (BNG). The Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out the information required to be submitted with a planning application relating to the biodiversity gain condition. This includes the completed biodiversity metric calculation tool showing the calculation of the biodiversity value of the onsite habitat and the biodiversity value.
25. The Planning Practice Guidance (PPG) states that the minimum national information requirements will allow consideration of existing habitat baselines for relevant planning applications so there is common understanding about the pre-development biodiversity value of the development's onsite habitat at this stage. The PPG also indicates that it is generally inappropriate for decision makers, when determining a planning application for a development subject to BNG, to refuse an application on the grounds that the biodiversity gain objective will not be met.
26. The appellant has submitted a BNG matrix indicating that the only existing habitat is modified grassland, but there is no substantive justification on why its condition has been assessed as moderate. Further, the PEA indicates the presence of scrub within the site, but this is not included in the BNG matrix. In addition, no plan of the

pre-development biodiversity baseline has been submitted. The Council considers that this information should be provided at the planning application stage.

27. However, if approved, developments liable for statutory BNG are subject to a deemed biodiversity gain condition. Such development cannot commence until a biodiversity gain plan has been submitted to and approved by the local planning authority. The PPG makes clear that this must contain a number of matters, including the pre-development biodiversity value and a plan showing the existing onsite habitat. Therefore, issues relating to the quality and extent of the minimum information that has been supplied are matters to be resolved through the discharge of the condition.
28. Consequently, I conclude that the proposed scheme could meet the statutory requirements for the provision of BNG through the information needed in the biodiversity gain plan required to discharge a deemed biodiversity gain condition.

Other Matters

29. The Council did not find harm or development plan conflict in relation to several other matters, including flood risk, living conditions, construction impacts, loss of agricultural land, parking, highway safety and impacts on heritage assets. Further, several consultees, including the Parish Council, did not object. Nonetheless, even if I were to agree with the Council on these points, the absence of harm would be a neutral matter which would not carry weight in favour of the proposed scheme.
30. The proposal would be likely to have a significant effect, either alone or in combination, on one or more European habitats sites due to its location within the Zone of Influence set out in the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). However, notwithstanding the unilateral undertaking to contribute towards mitigation measures in the RAMS, given my conclusion below there is no need to consider the implications of the proposal on the protected sites because the scheme is unacceptable for other reasons.

Planning Balance and Conclusion

31. The Council accepts that it cannot currently demonstrate a five year housing land supply required by the National Planning Policy Framework (the Framework). The Council's position is that it has a 2.7 year supply. As there is a shortfall in housing provision, paragraph 11(d) of the Framework is engaged.
32. Paragraph 11(d)(ii) of the Framework confirms that in such circumstances, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies including directing development to sustainable locations, making effective use of land and securing well-designed places.
33. The Framework seeks to boost housing supply and highlights the important contribution small and medium sized sites can make. The proposal would make a modest contribution of three dwellings to the supply of housing on a small site. It would contribute towards Maldon's housing supply, making a modest difference to addressing the shortfall, and therefore I attribute moderate weight to this benefit.
34. There would also be some economic and social benefits during construction when the development would provide jobs and opportunities for local companies and

once occupied when future residents would use facilities and spend in the local area. However, given the relatively small scale of the scheme, these benefits would be limited.

35. In contrast, the site would not be a suitable location for housing, and the proposed development would harm the character and appearance of the area. There has also been a failure to demonstrate that the proposal would not harm protected bats and badgers. This would conflict with the Framework where it requires developments to be sympathetic to local character, prioritise sustainable transport modes, and protect priority species. Indeed, I must pay particular regard to directing development to sustainable locations when applying paragraph 11(d)(ii) of the Framework. The proposal would also be contrary to Policies S1, S8, T2, D1, N1 and N2 of the LDP. These matters carry significant weight against the scheme.
36. The Courts have found the need for consistency in decision making. In this respect, there are references to the approval of applications for housing at Stephenson Road when the Council could not demonstrate a five year housing land supply. However, they are in a different location to the appeal site, and in the case of the proposed scheme currently before me, the adverse impacts would significantly and demonstrably outweigh the benefits.
37. For the reasons given above, the proposal would conflict with the development plan and the material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal should be dismissed.

A Wright

INSPECTOR