



Appeal Decision

Hearing held on 9 February 2016

Site visit made on 9 February 2016

By David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 08 March 2016

Appeal Ref: APP/X1545/W/15/3133309

Land east of Malone Cottage, Maypole Road, Wickham Bishops, Essex, CM8 3NW.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Marven and Mrs Cracknell against the decision of Maldon District Council.
 - The application Ref. OUT/MAL/15/00267, dated 17 March 2015, was refused by notice dated 4 August 2015.
 - The development proposed is residential development of 14 dwellings, garages and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for residential development of 14 dwellings, garages and associated works at Land east of Malone Cottage, Maypole Road, Wickham Bishops, Essex, CM8 3NW, in accordance with the terms of the application, Ref. OUT/MAL/15/00267, dated 17 March 2015, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Procedural matters

2. An application for costs was made by the Council against the appellants. This is the subject of a separate decision.
3. The proposal is in outline format with only the detailed matter of the access to the site to be considered at this stage. All other detailed matters are reserved for subsequent consideration. I have therefore treated the submitted layout plan as for illustrative purposes only.
4. The appeal is accompanied by a formal Planning Obligation (Unilateral Undertaking), made under section 106 of the Act, dated 13 November 2015, and signed by the appellants. The Obligation covenants the landowners, in general terms, in the event of planning permission being granted, to ensure the provision of 5 units of affordable housing on site, together with a contribution towards the provision of other affordable housing off-site. I have had regard to the Undertaking as a material consideration.

Main Issues

5. The main issues are:

- Whether the proposal accords with the housing strategy in the development plan?
- Whether the council can demonstrate a 5 year supply of deliverable new housing land?
- The effect on the character and appearance of the area, including a Special Landscape Area?
- The effect of sports and scout facilities within an adjacent site on the living condition of the occupiers of the new houses, and *vice versa*.

Reasons

Background

6. The appeal site extends to about 1.5ha and is an open field which lies within the village of Wickham Bishop to the north of Maldon. The site lies between the roads of Mapole Road and Great Totham Road and it is proposed in outline to erect 14 houses with a single access point into both road frontages. To the north, north-west and west of the site lie residential properties, whereas to the south of the site lies a training/activity centre and camp site used by the Maldon and East Essex District Scouts. At present the site is open pasture but photographs submitted by the Council show that occasionally the land has been used for camping by Scout groups with the owner's permission.

Development Plan policy

7. The development plan comprises saved policies in the Maldon District Council Replacement Local Plan adopted in 2005 (referred to as the RLP) and which covered the period to 2014.
8. The emerging Maldon District Local Development Plan (referred to as the submitted LDP) was submitted to the Secretary of State for Examination in April 2014. Following public hearing sessions in January and February 2015 concerning housing and infrastructure policies, the Inspector issued Interim Findings which indicated that the Plan should be withdrawn as Policy H6, concerning gypsy and traveller sites, was unsound. Following further correspondence with the Council, the Inspector issued further Interim Findings by letter dated 2 June 2015, which, amongst other aspects, said "all the Plans housing policies, taken together, are fundamentally unsound because the Plan does not identify and meet objectively assessed housing needs and it is not based on adequate and up-to-date and relevant evidence as required in national policy." The Inspector concluded by giving the Council the option of withdrawing the plan or receiving his report on it as it stood.
9. The Council considered this approach to be disproportionate and believed that policy H6 could be modified to allow the Examination of the rest of the plan to be continued and asked the Secretary of State to call-in the plan to consider the Council's points. The Secretary of State called in the submitted plan on the 8 June 2015 and I am advised that he has agreed to consider whether the Inspector has reached a proportionate and balanced view on the Plan as a whole in the light of national planning policy.

10. That remained the case at the time of the hearing and of my assessment of the appeal. I will assess the weight to be applied to the submitted LDP within the main issues.

Accord with strategy in the development plan

11. In terms of the adopted plan, it is clear that the site lies outside of the village boundary identified in the RLP and on behalf of the appellants, Mr Morgan agreed that the proposal does not accord with saved policies S1 and S2 of the RLP. However, at the hearing the Council confirmed that while the RLP made provision for a criteria based approach to new housing within settlements, it did not make provision for new housing allocations. Moreover, as the intended plan period has now passed, I consider that it is out-of-date as it no longer can be said to cater for the objectively assessed housing need. I therefore find that I can only place limited weight on this aspect of the development plan.
12. Turning to the emerging plan, this recognises that Wickham Bishops does lie in a sustainable location and Policy S8 lists the village as one of the main settlements in the district. Further, Policy S2, which sets out the details of new housing numbers for the overall strategy, makes provision for 345 new dwellings in 'other villages' (i.e. including Wickham Bishops) as part of 'Rural Allocations'. However, the proposal does not accord with this as the site is not allocated for development nor lie within the defined village boundary.
13. Nevertheless, although the proposal is not compatible with this emerging plan, I find that only limited weight can be given to this strategy in the LDP at this time, in the absence of a clarifying decision from the Secretary of State, because of the Examining Inspector's concerns about all of the policies being fundamentally unsound and an inadequate evidence base of housing need.
14. For the reasons I have given I find that both elements of the development plan can only be given limited weight at this stage.

Housing land supply

15. Paragraph 49 of the Frameworks indicates that Councils must be able to demonstrate a five year supply of sites for new housing (5YHLS) otherwise policies regulating the supply of housing should not be considered up-to-date.
16. It is clear that at the time of the Council's decision on this application, the Council concluded that a five years supply could not be demonstrated and therefore paragraph 49 was engaged.
17. However, the Council's assessment of 5YHLS undertaken in September 2015 concluded that there was a five year supply. Evidence of this was put to the inspector at an inquiry into an appeal in Heybridge Basin for redevelopment of the site with 31 dwellings¹. The Inspector concluded in October 2015 that on the evidence before her "the Council does have a 5 year housing land supply" although she was unable to accord significant weight to the housing policies in the emerging LDP. This decision was also referred to by the Inspector in APP/X1545/W/15/3003529.
18. In this case, the appellants' team does not contest the housing supply figures put forward by the Council but stresses that the LDP has not been found to be sound. Further, the appellant stressed that the current housing supply is largely

¹ APP/X1515/W/15/3003795 – Former Timber Yard, Basin Road, Heybridge Basin, Essex, CM9 4RN.

based on strategic sites coming forward and that the review and allocation of the smaller rural sites necessary to make up the 345 dwellings in rural areas (as forming part of the strategy set out in Policy S2 total) that are not strategic sites was some way off. The Council accepted that the rural allocations DPD was projected to be adopted in April 2017 following consultation on the preferred options in May 2016. Nevertheless, I consider that this time scale is optimistic given that the Council accepted that there was likely to be a fair degree of objections from local people to such allocations. As such there appears to be a lack of certainty and provision at the moment over the provision of small sites in sustainable locations.

19. Pulling together my conclusions on the first two issues, it appears to me that there is no evidence before me to suggest that the Council cannot demonstrate a five years supply of strategic sites for new housing development, and that paragraph 14 is not engaged in this case. But even so, I can only place limited weight on the regulating function of the development plan policies as these are either out of date or not progressed enough through the formal plan making process, particularly regarding the provision of small sites in rural areas.

Effect on character and appearance

20. The Council describe Wickham Bishops as a village that is recognised for its Arcadian layout with the landscape forming the dominant appearance with the dwellings interspersed within landscape and the Council suggests that Arcadian developments are typically low density developments.
21. The Council also refer to the appeal site as part of a Special Landscape Area but this local designation appears to have been a temporary measure put forward in the RLP in 2005 pending the carrying out of the Maldon Landscape Character Assessment 2006. I have intimated that little weight can now be given to the 'old' Local Plan but I acknowledge the general description of the Assessment that the village lies in an area of rolling hills where there are deciduous woodlands and fields lined with hedges.
22. At the part of the hearing held on site I considered the character of the land from within the appeal site itself and from the adjoining lanes. Standing in the centre of the field, built development in the form of houses and other buildings are prominent around most of the boundaries of the site. To the north are buildings associated with the sports ground and detached houses; to the north-west there is a commercial garage and housing; to the west there are a range of forms of houses along Maypole Road; and to the south there are a few detached houses and the large buildings associated with the northern part of the Scout complex.
23. While the appeal site is mostly an open field without trees but enclosed by a hedge, the overall character of surrounding land is one of built development albeit one with a verdant form stemming from surrounding woodland and trees. I also noted that the two road frontages to Great Totham Road and Maypole Road fell well with the confines of the village indicated by the 30mph limit and notwithstanding the parish boundary with Great Totham near the south-eastern boundary of the site.
24. It appears to me that the density of housing proposed in this outline application amounts to less than 10 dwellings per ha which is a low density of development. Further, the illustrated layout shown on the submitted plan

demonstrates that the overall scale of development proposed can be accommodated on site with plot sizes and a general form that is consistent with the wider pattern of the surrounding part of the village. The illustrative layout also shows that there is ample scope for additional landscaping around the site, between the houses and along the road frontages to complement the recognised Arcadian character of the village.

25. I conclude on this issue that notwithstanding the policy objection in principle to the development of this site, the scale of development proposed in this outline application would be likely to result in a form of development which would be consistent with the character and appearance of the area and would not harm it. As such I find that the proposal accords with the relevant environmental criteria set out in saved policy BE1 of the Local Plan and Policy D1 of the emerging LDP.

Effect on living conditions

26. The second reason for refusal puts forward the Council's concern about the conflict that could arise over the relationship between the new housing on the appeal site and the adjacent scouting complex by causing noise and disturbance. Such disturbance could harm the living condition of the new residents but it could also restrict the activities of the scout complex if objections were raised. It also transpired at the part of the Hearing held on site that there was also a concern about some Scout activities like shooting and archery which may also have a direct effect on the proposed adjacent housing.
27. Dealing with noise and disturbance first, it appeared to me at the site visit that the scout complex is intensively used and that many of the activities associated with camping and sports are held outdoors and at times in the evening and at weekends when a quiet residential environment in surrounding areas could be expected. The proposal does not put forward any special measures to mitigate a noise impact that could cause disturbance.
28. However, conversely, the Council did not put forward any detailed evidence to show that the residential environment of the new housing would be harmed by the activities on the complex. There are a few detached houses fronting Maypole Road which are as close to many of the activity areas on the complex as the nearest of the proposed houses and no evidence was submitted of objections having been raised by the occupiers of these properties to noise and disturbance or smoke from camp fires. Further, from my observations on site, I am satisfied that the proposed houses would not suffer from a material degree of disturbance which would result in unsatisfactory living conditions nor do I envisage that normal scouting activities would give rise to such disturbance to the extent that their own use would be affected.
29. In terms of a more direct impact, I was shown areas to the side and rear of the main Scout hall/store which were used for shooting and archery. In the area immediately behind the hall there was a small space used for archery with rubber sucker tipped arrows and I am satisfied that this activity will not interfere with the proposed housing. However adjacent to the hall was a range for archery with pointed tipped arrows and for air gun shooting. The range ended just before the boundary with the appeal site and behind the target area there was an earth bank and a blanket of chainmail behind it. There was evidence of pellets embedded in the material and of holes made by arrows.

30. There is no technical evidence before me about the possible spread of air gun pellets and arrows beyond the Scout site and onto what is shown as plot 1 on the illustrative plan, but the risk of this is a possibility. I presume that the onus is on the operators of the Scout complex to ensure that sports of shooting and archery do not encroach onto other land outside of their site, but I also consider that it would be reasonable for the housing scheme to ensure some additional solid fencing along this boundary. The details and implementation of this can be conditioned.
31. Overall on this issue I am satisfied that the proposed houses would not have a poor residential environment and living conditions because of the activities on the existing Scout complex. Neither would the proposed housing development be likely to materially restrict the activities presently carried out there. However, it would be prudent for the housing scheme to make provision for a higher screen fence on the part of the boundary adjacent the shooting/archery range.

Other matters

32. In terms of the provision of affordable housing, at the Hearing the Council confirmed that the Unilateral Undertaking entered into by the appellants covenants the landowner to make provision for affordable housing as set out in paragraph 4 above and this satisfies the requirements of Policy H9 of the Local Plan and H1 of the LDP.
33. The representations made by local people also raise other objections to the development particularly the traffic generation on the local road system and existing highway junctions and question the adequacy of local social infrastructure. I note that the proposal includes a traffic assessment and having assessed this, the highway authority do not raise objection to the application. I have considered the Council's photographs which show some on-street parking on local roads which I understand takes place at school closing times and I also experienced at first hand use of the junction of Kelvedon Road and Maypole Road. However, there is no technical evidence before me to demonstrate that the traffic likely to be generated by the development would reduce highway safety at any junction. Nor is there evidence to establish that the cumulative effect of the additional traffic on the local road network would be severe, as per the test set out in last bullet point of paragraph 32 of the Framework. Finally, the representations submitted do not demonstrate that local services and other facilities cannot cater for or would be put at risk by the development. I therefore cannot put great weight on these submissions.

Planning Balance

34. Bringing my conclusions together on the main issues I have found that the residential development proposed would not accord with the strategy in the development plan as the site lies outside the village boundary defined in the adopted and the emerging local plans. However, for the reasons I have set out, only limited weight can be given to these plans at this stage.
35. Although I acknowledge that the Council can demonstrate an adequate supply of land for new housing, this relates mainly to the implementation of strategic housing sites and I share the appellant's concern that there is likely to be a delay in the allocation of small sites in rural areas.

36. I have found that the application site is substantially enclosed by houses and other buildings and that the principle of the development proposed would accord with the existing pattern of the village which is recognised to be a sustainable location. I am also satisfied that the development proposed is of a low density and that the degree of spaciousness and landscaping that is likely to be possible would ensure that the new housing would fit in with the local Arcadian form in accordance with the local detailed policies on environmental impact.
37. I have also found that the housing development would not be likely to suffer from a poor residential environment caused by activity at the existing adjoining Scout complex and that, conversely, their activities are not likely to be affected by the housing. However, it would be prudent to have some additional solid fencing on the boundary at the end of the firing range.
38. The positive impacts of the development have to be balanced with the negative effects. I find that the positive aspects of the development including the development of a small number of houses in a sustainable rural village, outweighs the limited policy objections stemming from the old and emerging strategies in the development plan. Further, I am satisfied that the development proposed amounts to 'sustainable development' as defined in the Framework when this is read as a whole. Therefore, as the adverse effects would not be significant nor outweigh the benefits, planning permission should be granted in accordance with paragraph 14 of the Framework and I will allow the appeal.

Conditions

39. In terms of conditions, the Council recommend 25 which I will consider under the same numbering. Condition No's 1, 2, and 3 are necessary to ensure that the other 'reserved matters' are submitted and approved and the development started within the timescale set out in law. However, details of external materials (4) are not needed at this stage as the 'appearance' of the houses is a reserved matter. As it is an outline scheme further details, as per 6 and 7 are needed for the proper drainage of the site and to avoid pollution. I will impose these conditions but consolidate them with no's 24, 25 and 26 about the disposal and management of surface water run-off. I will also impose no.8 in respect of the implementation of the recommendations of the Flood Risk Assessment.
40. in terms of condition no.9 no clear justification has been put forward concerning the amenity of neighbours or the appearance of the area as to why the 'permitted development' as generally allowed under Class in the Town and Country Planning (General Permitted Development) Order 2015 should be restricted and therefore I will not impose this condition.
41. The 'landscaping' of the site is a reserved matter and therefore a separate detailed condition (no.10) on the submission and the implementation of a landscaping scheme is not needed at this stage.
42. In terms of highway matters, I am satisfied that conditions 11, 12, 13, 14, 15, 16 and 17 are reasonable and necessary to ensure that there is proper access to the site with adequate sight lines in the interests of highway safety. However, No's 18 and 19 about off-road parking and garaging are not

necessary at this stage as 'layout' is a reserved matter and this would include details of off-road parking and location of garages.

43. I am satisfied that it is reasonable to require details of cycle storage facilities (no.20) for each dwelling and their implementation in the interest of promoting sustainability transport, but there is no clear justification put forward for condition no.21 to prevent garages from being use for commercial purposes on annexe accommodation and such use may in any event require planning permission in its own right.
44. Finally, I am satisfied that a scheme of archaeological investigation is reasonable and necessary and I will impose conditions 22 and 23.

Conclusions

45. For the reasons given above I conclude that the appeal should be allowed.

David Murray

INSPECTOR

Richborough Estates

Schedule of conditions

- 1) Details of the appearance, landscaping, layout, and scale of the development (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application 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 begin 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 there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the houses are occupied. Development shall be carried out in accordance with the approved details. The details submitted pursuant to this condition shall include additional fencing along part of the south-eastern boundary of the site along side the archery/shooting range so as to limit the encroachment of pellets and arrows from adjoining land.
- 5) Prior to the commencement of development details of:
 - An assessment of the hydrological and hydrogeological context of the development including run-off rates;
 - a surface water drainage scheme including measures to minimise the risk of off-site flooding including during the construction phase;
 - a scheme for the disposal of foul sewerage to serve the development;
 - The long term management and maintenance of these drainage facilities;shall be submitted to and agreed in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of any house and retained thereafter.
- 6) The measures contained within the Flood Risk Assessment a copy of which was submitted with the planning application and forms part of this permission, shall be fully implemented and be in place prior to the first occupation of any of the houses and shall be retained as such thereafter.
- 7) The scheme to be submitted as part of the reserved matters with the approved scheme and retained shall make provision for car parking within the site in accordance with the Council's adopted car parking standards. Prior to the occupation of the development the parking areas shall be constructed, surfaced, laid out and made available for such purposes in accordance with the approved scheme and retained as such thereafter.

- 8) Prior to the first occupation of the development, the proposed estate road, at its bellmouth junction with Great Tatham Road (Northern Site Access), shall be provided with 6.0m radius kerbs returned to an access road carriageway width no less than 5.5m. and flanking footway 2m. in width on the western side of the access returned around the radius kerbs. The new road junction shall be constructed at least to binder course prior to the commencement of any other development including the delivery of materials.
- 9) Prior to the proposed access being brought into use, minimum vehicular visibility splays of 50m westerly by 2.4m by 60m easterly, as measured along, from and along the nearside edge of the carriageway, shall be provided on both sides of the centre line of the access and shall be maintained in perpetuity free from obstruction clear to ground. This condition relates to the Northern Site Access on Great Tatham Road.
- 10) Prior to the first occupation of the proposed dwelling, the proposed vehicular access shall be constructed to a width of 5.5m and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge to the specifications of the Highway Authority. This condition relates to the Southern Site Access on Maypole Road.
- 11) No unbound materials shall be used in the surface treatment of any of the proposed vehicular accesses within 6m of the highway boundary or proposed highway boundary. This condition relates to the entire development site.
- 12) Prior to the first use of the proposed accesses, details of the construction and future maintenance of the necessary bridging or piping of the drainage ditch/watercourse shall be submitted to and approved in writing by the Local Planning Authority and the Lead Local Flood Authority (Essex County Council).
- 13) Prior to commencement of the proposed development, details of the provision for the storage of bicycles for each dwelling, of a design this shall be approved in writing with the Local Planning Authority. The approved facility shall be secure, convenient, covered and provided prior to the first occupation of the proposed development hereby permitted site and shall be maintained free from obstruction at all times for that sole purpose in perpetuity.
- 14) No development including any site clearance or groundwork of any kind shall take place within the site until the applicant or their agents; the owner of the site or successors in title has submitted an archaeological assessment by an accredited archaeological consultant to establish the archaeological significance of the site. Such archaeological assessment shall be approved by the local planning authority and will inform the implementation of a programme of archaeological work. The development shall be carried out in a manner that accommodates such approved programme of archaeological work.

- 15) No development including any site clearance or groundworks of any kind shall take place within the site until the applicant or their agents; the owner of the site or successors in title has secured the implementation of a programme of archaeological work from an accredited archaeological contractor in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The development shall be carried out in a manner that accommodates the approved programme of archaeological work.

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APPEARANCES

FOR THE APPELLANT:

Mr B Morgan, RIBA, MRTPI. Architect and Planning Consultant

Mr S Cock Mersea Homes

FOR THE LOCAL PLANNING AUTHORITY:

Mr E Addae-Bosompea Appeals Officer, Maldon District Council

Mr J Somers, BA ScC Sci (planning) MA, Hist. Env. Cons. Planning Officer, Maldon District Council

Mr M Leigh, BA (Hons) MA, MRTPI, Development Control Manager, Maldon District Council

INTERESTED PERSONS:

Mr H Bass Local District Councillor and resident

Mr B Sayers Chairman Parish Council

Mr Durham, Local District Councillor

Mr Mike Bell Local Scout Association

Ms V Hare Friend of the appellants

DOCUMENTS

- 1 Copy of APP/X1545/W/15/3032632
- 2 Copy of APP/X1545/W/15/3003529
- 3 Photographs of appeal site with occasional Scout use
- 4 Photographs of Scout complex
- 5 Council's written application for Costs