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## Appeal Decision

Site visit made on 26 January 2016

**by Nick Palmer BA (Hons) BPI MRTPI**

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

**Decision date: 07 March 2016**

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### **Appeal Ref: APP/X1545/W/15/3136324 Land north of Woodrolfe Road, Tollesbury**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Edward Gittins & Associates against the decision of Maldon District Council.
  - The application Ref OUT/MAL/14/01202, dated 4 December 2014, was refused by notice dated 13 April 2015.
  - The development proposed is up to 24 N<sup>o</sup> village houses.
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### **Decision**

1. The appeal is allowed and planning permission is granted for up to 24 N<sup>o</sup> village houses at Land at Woodrolfe Road, Tollesbury in accordance with the terms of the application, Ref OUT/MAL/14/01202, dated 4 December 2014, subject to the conditions set out in the attached schedule.

### **Procedural Matter**

2. The application is for outline planning permission with all matters reserved. A sketch plan showing the preferred location of the means of access has been submitted. I have considered that plan as being indicative of a possible means of access.

### **Main Issue**

3. The main issue in the appeal is the effect of the proposed development on the character and appearance of the area.

### **Reasons**

4. The appeal site is an open field to the east of Tollesbury and is separated from the built up area by a strip of open land including scrub woodland. Further to the east there is a separate built up commercial/industrial area around the marina. The site is outside the settlement boundary for the village as defined in the Maldon District Replacement Local Plan (LP) (2005).
  5. The site forms part of an open gap between the village and the marina. There is a community centre to the east of the site and a dwelling opposite. Planning permission has been granted for a new dwelling between that property and the built up area. The appeal proposal would erode the open gap between the two parts of the settlement but nonetheless there is an area of adjacent public open space and other open land that would maintain the sense of openness between the two built-up areas.
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6. The landscape character of the area is defined as Tolleshunt Coastal Farmland in the Maldon Landscape Character Assessment. This is gently undulating arable farmland behind the coastal marshland with small-scale settlements in close proximity. There is a semi-regular pattern of tall hedgerows, small copses and shelterbelts. The site forms a typical part of this landscape being enclosed by trees and hedges around its boundaries. A public footpath runs along the eastern boundary of the site towards the coast which is in close proximity. The site is at a lower level than the adjacent built up parts of the village. The development would be screened to a significant extent by the surrounding vegetation and further planting could take place to strengthen those boundaries.
7. Notwithstanding the boundary planting it is likely that the development would remain visible above and through the trees. Because of its close proximity to the footpath it would be quite prominent when seen from that route. However the open character of the footpath beyond the appeal site would remain.
8. The site is within a Special Landscape Area as identified in the LP. Saved policy CC7 of the LP takes a generally restrictive approach to development in those areas. That approach is inconsistent with paragraph 113 of the National Planning Policy Framework (the Framework) which states that criteria-based policies should be used. The proposal would not accord with saved policy CC7 in terms of conserving the character of the area but because of the lack of consistency with the Framework I give reduced weight to that policy conflict.
9. The site also falls within a Coastal Zone as identified in the LP. Saved policy CC11 of the LP requires that development does not adversely affect the open and rural character of the Coastal Zone and that it has minimal impact on views into and out of the area. The proposal would affect the openness of the landscape and this has importance because of its proximity to the coast. It would be likely to be visible from the sea wall. The proposal would not accord with that part of saved policy CC11 of the LP for these reasons.
10. I also find that the proposal would not accord with saved policies CC6 and BE1 of the LP which require that there is no harm to landscape character and that proposals make a positive contribution to the landscape and open countryside.
11. Paragraph 109 of the Framework requires the protection and enhancement of valued landscapes. The landscape has special qualities in terms of its proximity to the undeveloped coast. Those qualities and the designations in the LP indicate that it is a valued landscape. This consideration must carry significant weight.
12. The visual effects of the proposed development would be lessened to some extent by the surrounding planting. The development would not be prominent in terms of the topography of the area. However the urban encroachment into the open landscape would affect its character. For the reasons given I find that the proposal would have an adverse effect on the character and appearance of the area.

### *The Benefits of the Development*

13. The Framework<sup>1</sup> requires local planning authorities to boost significantly the supply of housing. Authorities should meet the full objectively assessed needs

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<sup>1</sup> NPPF paragraph 47

for market and affordable housing and should identify and update annually a five year supply of deliverable housing sites.

14. The Council has referred to recent appeal decisions which conclude that the Council has a five year supply. However two more recent appeal decisions<sup>2</sup> which examined the objectively assessed housing need in greater detail conclude that there is not a five year supply. For the purposes of this appeal I find that the Council cannot demonstrate a five year supply of deliverable housing sites.
15. The appellant refers to there being a lack of developable housing sites in Tollesbury. The Council's Five-Year Housing Land Supply Statement 2014/15 indicates that excluding completed sites there are 10 housing sites in Tollesbury that have permission. Three of those sites were under construction. The Council estimates that the remainder will be completed by 2019. There is one site for 10 dwellings and another for 5 dwellings with the remainder being for single dwellings. This information indicates that the supply of new dwellings in the village is limited as is the supply of affordable homes. The appellant refers to there being 30 people on the Housing Register with local connections.
16. The Council intends to produce its Rural Housing and Employment Allocations and District-Wide Travellers Provision Development Plan Document but this is at a very early stage. In the meantime there is no up-to-date development plan provision for housing in the village which is identified in draft policy S8 of the emerging Local Development Plan (LDP) as a larger village in the settlement hierarchy.
17. An interested party has drawn attention to the walking distances to village facilities and the lack of a footpath along the site frontage. Nonetheless it is evident that there is a range of facilities that are within walking distance and there are public transport services available.
18. The proposal would be of clear benefit in helping to address the housing shortfall. Taking into account the number of dwellings proposed and the generally good level of accessibility of the site to services, facilities and sources of employment I give significant weight to that benefit.
19. The proposal would also provide 40% of the dwellings as affordable dwellings. This number would exceed the requirement in the LP and would be in accordance with the requirement in the LDP. This benefit is also significant and I give additional significant weight in this regard.
20. The development would provide for public access to the adjacent open space. While this would primarily relate to the need arising from the residents of the new dwellings it would also represent a general public benefit albeit that this would be limited. For these reasons I give limited weight to that benefit.

### **The Unilateral Undertaking**

21. The appellants have provided a Unilateral Undertaking. This would secure the provision of the affordable housing, the public open space, a Travel Information Pack for the occupiers of each dwelling and contributions towards Early Years and Childcare provision and School Transport.

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<sup>2</sup> APP/X1545/W/15/3032632 and APP/X1545/W/15/3029774

22. The affordable housing is required in order to accord with development plan policy. Although limited weight can be given to the emerging LDP the identified local need for affordable housing is a material consideration which indicates that the proposed 40% provision would be necessary.
23. The public open space would be necessary to provide a recreational facility for the residents of the development and to avoid increased recreational use of areas close to designated habitats. The Travel Information Pack would be necessary to encourage the residents of the development to use sustainable means of transport in preference to the private car.
24. Essex County Council has stated that the Early Years and Childcare provision in the area is at capacity. The development would create additional demand for this provision and the contribution towards that provision which has been calculated in accordance with a standard methodology would be necessary.
25. The Council has confirmed that there are no other sites in Tollesbury Ward in respect of which pooled contributions towards Early Years and Childcare provision have been secured since April 2010. It is not clear whether any sites elsewhere will have so contributed but I consider this unlikely given that the surrounding area is rural. On this basis the Early Years and Childcare contribution would be in accordance with the pooling restriction in Regulation 123(3)(b) of the Community Infrastructure Levy Regulations 2010.
26. Tollesbury Primary School has limited capacity at present and it is likely that some pupils from the development would need to travel to Tolleshunt D'Arcy. Secondary school pupils in the village travel to Thurstable School and Sixth Form Centre. The basis for Essex County Council's request for school transport contributions has not been fully explained. It is not clear whether there is any existing school transport service to the village and if so, the extent to which this is funded by the County Council and whether the users of the service pay for this. For these reasons I am not convinced that this contribution is necessary to make the development acceptable in planning terms. In addition, no information has been provided regarding any pooling of contributions towards this service.
27. For these reasons I consider that, with the exception of the provision for the school transport contribution the planning obligation meets the tests in paragraph 204 of the Framework. The school transport contribution is however not a necessary requirement for planning permission to be granted.

### **Planning Balance**

28. Paragraph 14 of the Framework advises that where relevant policies for the supply of housing are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
29. I give significant weight to the harm I have identified in terms of the character and appearance of the area. On the other hand I give significant weights to the benefits of the proposal both in terms of the general housing supply and in terms of affordable housing. I also give limited weight to the benefit of the public open space provision. Those weights outweigh the significant weight that I accord to the harm. For these reasons the adverse impact of allowing

the development does not significantly and demonstrably outweigh the benefits.

30. Given the shortfall in housing supply and the availability of local services, facilities and employment the proposal would meet the social and economic roles of sustainable development. The environmental harm would be tempered by the mitigating effects of landscape screening and the open space provision. For these reasons, considered as a whole I find that the proposed development would be sustainable.
31. The proposal would accord with the part of saved policy CC11 of the LP which allows for development that meets an essential overriding local need which cannot be met within the settlement development boundaries. I have identified conflict with other LP policies but material considerations outweigh those policy conflicts.
32. The proposal would not accord with draft policy S8 of the LDP to which only limited weight can be given but in any case the absence of a five year housing land supply renders that draft policy out of date.

#### *Effect on Habitats*

33. The site is close to the Blackwater Estuary which is a wetland of international importance under the Ramsar Convention. It is designated a Special Protection Area (SPA) and a Special Area of Conservation (SAC). The estuary is also designated a Site of Special Scientific Interest (SSSI). The appellants' Habitats Regulations Assessment recommends the inclusion of the open space facility to avoid impact from recreational users on the international habitats and the incorporation of sustainable drainage measures to avoid run-off and sedimentation. Those measures can be secured by means of the planning obligation and planning conditions.
34. There would be no cumulative impact because other planned housing developments are close to Maldon and Heybridge. Any additional sewerage discharge consents which may affect international sites are subject to approval by Natural England and surface water quality is monitored under the Water Framework Directive.
35. On the basis of the appellants' assessment Natural England advises that the proposal would not be likely to have a significant effect on the interest features of the international sites. For these reasons I consider that an appropriate assessment is not required.
36. Natural England also considers that the proposal would not damage or destroy the interest features of the SSSI and I see no reason to conclude otherwise. On a similar basis there is no evidence that the proposal would affect protected species.

#### *Other Matters*

37. Interested parties have raised concerns about traffic through the village and associated congestion. I acknowledge that traffic to and from the businesses at the marina will travel through the village but the Highway Authority has no objection to the proposed development in terms of highway safety and the capacity of the road to accept the traffic that would be generated. I see no reason to disagree with that assessment.

38. The site is in an area at low risk of flooding from tidal or fluvial waters. The Flood Risk Assessment concludes that there is a low risk of flooding from ground water. Sustainable drainage measures would be used in the development, which are indicated to be either an infiltration basin or an attenuation basin. Those measures can be secured by a condition and would ensure adequate and sustainable drainage of surface water. Utility companies state that existing infrastructure has capacity to deal with foul drainage from the development.
39. I have taken into account all other matters raised including the concern expressed about the capacity of the doctors' surgery. Those matters do not alter my conclusions.

### **Conditions**

40. I have had regard to the tests in paragraph 206 of the Framework in imposing conditions. I have imposed the conditions as suggested by the Council and the Highway Authority and to reflect the appellants' recommended ecological mitigation measures.
41. Conditions requiring the details of hard and soft landscaping, the external facing materials to be used in the dwellings and details of boundary treatments to be approved are necessary to ensure the appearance of the development is acceptable. The landscaping condition includes a requirement for a native species hedge along the western boundary of the site to ensure that the appearance of the development is sympathetic to the adjacent open space.
42. Conditions requiring the provision of car parking and the necessary visibility splays at the access are necessary in the interest of highway safety.
43. A condition requiring the approval of surface water and foul drainage details is necessary to ensure that the required standards are met in terms of ensuring adequate drainage and preventing pollution.
44. A condition requiring an archaeological investigation is necessary because the site is within an area that has been identified as having a high potential for archaeological remains.
45. Finally I have included a condition requiring the reptile and water vole mitigation measures to be carried out as recommended in the Reptile Survey and in correspondence from the appellants' ecological consultant to ensure that those species are safeguarded.
46. The Council's Environmental Health Officer recommended conditions requiring a scheme of investigation for ground contamination and a noise assessment in relation to industrial uses at the marina. The Council did not however request the inclusion of those conditions. There is no evidence that the site has been previously used for any purpose other than agriculture or that it may be contaminated. The site is some distance away from the marina and there is no evidence to suggest that any commercial activity there would potentially be harmful in terms of noise. For these reasons there is no information before me to indicate that those conditions would be necessary.

## **Conclusion**

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

*Nick Palmer*

INSPECTOR

## **Schedule of Conditions**

- 1) Details of the access, appearance, landscaping, layout, and scale, (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 details of car parking provision within the site have been submitted to and approved in writing by the local planning authority. The parking areas shall be constructed, surfaced, laid out and made available for such purposes before the development is occupied and shall be retained as such thereafter.
- 5) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) 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 treatments to be erected. The boundary treatment shall be completed before the development to which it relates is occupied. Development shall be carried out in accordance with the approved details.
- 7) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development. The scheme shall include details of hard landscaped areas including materials and finishes. The soft landscaping details shall include schedules of shrubs and trees to be planted, including the species, stock size, proposed numbers/densities and details of implementation, aftercare and maintenance. The scheme shall include provision for the planting of a hedge of native species along the western boundary of the site. Development shall be carried out in accordance with the approved details.

- 8) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 9) No development shall take place until details of surface water and foul water drainage including a surface water management strategy have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 10) Visibility splays of 2.4 metres by 43 metres shall be provided on both sides of the access, as measured along the nearside edge of the carriageway before the access is first used by vehicular traffic.
- 11) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 12) Development shall take place in accordance with the mitigation measures as set out in the Reptile Survey Ref DFCEP 2606 by D F Clark Bionomique Ltd and the recommendations in the letter from D F Clark Bionomique Ltd dated 24 September 2014.

Richborough Estates