



Appeal Decision

Hearing held on 1 December 2015

Site visit made on 1 December 2015

by L Gibbons BA (Hons) MRTPI

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

Decision date: 29 July 2016

Appeal Ref: APP/X1545/W/15/3053104

Oval Park, Hatfield Road, Langford, Maldon CM9 6WG

- 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 CML Microsystems Plc and Countryside Properties (UK) Ltd against the decision of Maldon District Council.
 - The application Ref FUL/MAL/14/00788, dated 7 July 2014, was refused by notice dated 18 March 2015.
 - The development proposed is the demolition of existing structures and construction of 45 residential units, access and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The development plan for the area comprises the saved policies of the Maldon District Replacement Local Plan (MDRLP) 2005. The Council submitted its Local Development Plan (LDP) for examination in April 2014. In his interim findings, the Inspector found that the LDP was unsound due to concerns with Policy H6 (Provision for Travellers). The Council made a request to the Secretary of State to call in the Plan under Section 21 of the Planning and Compulsory Purchase Act 2004, in relation to the approach taken by the Inspector. The LDP was called in during June 2015.
 3. The Secretary of State issued a letter on 6 March 2016. In summary, the letter indicates that the LDP economic strategy would need to go through examination before reaching firm conclusions about the Council's housing provision. The letter confirms that the examination of the plan would be moved forward with a new Inspector. Taking this into account and that a significant number of objections are therefore yet to be resolved, I have given the LDP limited weight.
 4. Following the Hearing, the Council confirmed that the Langford and Ulting Neighbourhood Plan (L&UNP) had reached examination stage. The independent examination began on 18 February 2016. The main parties commented on the most recent position of the LDP and the L&UNP and I have had regard to these additional representations in coming to my decision.
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5. The appeal form indicates that the Council failed to determine the appeal. At the Hearing, it was confirmed that the appeal was made on the basis of a refusal of planning permission.
6. At the Hearing, the Council also confirmed that Policy BE1 referred to in reason for refusal 2 was not relevant to that reason; I have dealt with the appeal on this basis.
7. As part of the appeal process, the appellants submitted a certified copy of a section 106 Unilateral Undertaking (UU) dated 1 December 2015 in relation to contributions to highway safety and improvements, residents travel packs, bus service, education and the provision of affordable houses in the scheme. I return to this below.
8. Following the close of the Hearing the appellants submitted an appeal decision¹ at Land off Maldon Road, Great Totham, and dated 25 January 2016. This was in support of arguments already made and the Council was provided with an opportunity to comment. No party would be prejudiced by me taking this decision into account in my consideration of this appeal.

Background and Main Issues

9. The appeal site has a planning history which includes outline planning permission for B1 industrial development in 1994. The site has been partially developed for B1 use with CML Microsystems occupying a headquarters building.
10. In 2013, proposals for residential development for 146 dwellings, internal access road, public open space and ancillary development, as well as demolition of former water storage tanks and ancillary outbuildings was dismissed on appeal².
11. The issues before the Inspector included the effect of the proposed development on the character and appearance of the area, including the Chelmer and Blackwater and Langford Conservation Areas. Also the effect on the setting of adjacent listed building, whether the change of use from employment was justified, sustainability and whether the proposed affordable housing provision was acceptable. The Inspector concluded that the scheme would cause harm to the character and appearance of the area and would compromise the setting of the listed buildings and that the benefits associated with the proposal did not outweigh that harm.
12. Draft issues were circulated during the Hearing. In the above context and from all that I have read, heard and seen I consider the main issues now to be:
 - i) Whether the Council has a five year supply of housing land.
 - ii) The effect of the proposal on strategic infrastructure within the area;
 - iii) Whether the development would undermine the Local Plan making process;
 - iv) Whether the proposal represents a sustainable form of development, and;

¹ APP/X1545/W/15/3032632

² APP/X1545/A/12/2183335

- v) Whether the proposal would accord with the emerging Neighbourhood Plan.

Reasons

Five Year Supply of Housing Land

13. Paragraph 47 of the National Planning Policy Framework (the Framework) indicates that in order to boost significantly the supply of housing, local planning authorities should ensure that they meet their full and objectively assessed housing needs for market and affordable housing.
14. When the Council determined the decision, it indicated it was not able to demonstrate a five year housing land supply. However, the Council now base their housing requirement on the evidence base for the emerging LDP including 'Assessing Maldon's Housing Requirements' report³ and have indicated that it is now able to demonstrate a five year supply. I accept that the approach of the Council on the housing requirement would need to be fully tested through an Examination in Public of the Local Plan. Notwithstanding the appellants' comments on this matter, it is not within the scope of this appeal to replicate the detailed process of establishing the objectively assessed need for the area.
15. The appellants argue that the full objectively assessed need is likely to be higher and refer to other figures proposed by other objectors to the LDP which included figures of over 400. The LDP Inspector had referred to a figure of 381 homes per year and the appellants tested the supply against this and the Council's proposed figure. Nevertheless, in the absence of agreed alternative figures the requirement from the evidence base indicated by the Council seems to me to be a reasonable basis on which to assess the five year housing land supply position.
16. At the Hearing, a number of matters relating to the delivery of sites were discussed. This focused on five strategic sites (S2b, S2h, S2i, S2j and S2k). I accept that the appellants consider that the delivery rates for these sites are optimistic and that some have infrastructure capacity issues which would delay them. I understand that the appellants have questioned the delivery rates with some promoters. However, the delivery rates are based on the Council's discussions with the developers and promoters of these sites and the information they have provided. I consider that on the basis of the evidence before me, it would be reasonable to include these delivery rates within the housing land supply figures.
17. I accept that the appeal decision for Land off Maldon Road, Great Totham indicated that the Council did not have a five year supply of housing land. However, that Hearing took place prior to the production of the more up to date evidence produced by the Council. The Inspector's conclusions in that regard should therefore be read in that context.
18. My attention has also been drawn to a number of other recent appeal decisions including the Timber Yard, Heybridge Basin decision⁴ which concluded that the Council were able to demonstrate a five year supply of housing land. The Council's most recent five year housing land supply statement published in September 2015, takes account of the considerations of the five year supply

³ NMSS dated August 2014

⁴ APP/X1545/W/15/3003795

within the Timber Yard decision. I see no compelling reason to doubt the findings of this and other appeal decisions and I conclude that the Council does have a five year supply of housing land on the basis of the evidence before me and for the purposes of this appeal.

19. I have found that a five year supply of housing land does exist within the area and in these circumstances I consider that the policies of the MDRLP should not be automatically treated as being out of date. Applications should be determined in accordance with the development plan unless material considerations indicate otherwise. Saved Policy T1 of the MDRLP sets out that priority will be given to development within defined development boundaries and it does not specifically refer to residential development. It is consistent with the Framework where it relates to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling. Saved Policy T2 relates to transport infrastructure in new development. I consider that these policies are broadly in accord with the Framework as a whole. Therefore, I afford them significant weight.

Infrastructure

20. Policy S2 of the emerging LDP includes a reference to infrastructure constraints. The key matters discussed at the Hearing in respect of infrastructure relate to highways, including junction capacity and also school places. I accept that the Council is concerned about the implications for the delivery of infrastructure against the proposed strategic growth and that they consider that Highways and Education Authorities are not necessarily able to assess the cumulative impacts.
21. The Highways Authority did not object to the proposal and no strategic highway or junction capacity issues were raised by them. The Transport Statement⁵ accompanying the scheme indicates that there would be a reduction in the numbers of cars in comparison to a fully completed employment development on the site. The Council do not disagree with the detailed findings of the Transport Statement and I see no reason to conclude otherwise. The proposals would therefore be in accordance with Policy T2 of the MDRLP which amongst other things seeks new development which will provide safe access to and from the highway, off-site improvements to the highway and links to the adjacent or nearby foot/cycle path network.
22. The proposal would result in an additional 12 primary school and 8 secondary school places. I note that the strategic growth within the area would require new school facilities and I understand that the Plume School would need to expand. I also note that physical capacity for further expansion at the school may be limited. However, I understand that the Education Authority did not object to the proposal as in the short term there would be capacity to absorb new pupils resulting from the development and the proposal would not prejudice the provision of education facilities in the future. Based on the evidence before me, I conclude that the proposal would not have a detrimental effect on strategic infrastructure capacity within the area.

⁵ Odyssey Markides, July 2014

The emerging Local Plan

23. The Planning Practice Guidance (the Guidance) refers to the circumstances where it might be justifiable to refuse planning permission on the grounds of prematurity. It refers to circumstances where 'a) *the development proposed is so substantial, or its cumulative effect would be so significant that to grant planning permission would undermine the plan-making process by pre-determining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and b) the emerging plan is at an advanced stage but is not formally part of the development plan for the area.*
24. Policy S2 of the emerging LDP sets out that the 'Other Villages' including Langford would be allocated a total of 345 dwellings as a 'rural allocation' over the plan period. I have had regard to the scale of development proposed which I consider would be fairly small in relation to the overall housing numbers set out in the emerging LDP, including the 'rural allocation' figure. For the reasons given above, I conclude that the proposal would not be so substantial or result in a significant cumulative effect on new development proposed within the emerging LDP.
25. The Council have started the process of identifying potential site allocations and indicate that it is intended to undertake a preferred options consultation on a site allocations document in spring 2016. I understand that the appeal site is not currently identified as an allocation. Nevertheless, given the stage this has reached, I give this consideration very little weight.

Whether the proposal represents a sustainable form of development

26. The Framework establishes that sustainable development should be seen as a golden thread running through both plan-making and decision taking. The Framework identifies three dimensions to sustainable development – economic, social and environmental. The Framework makes it clear that the three roles the planning system is required to perform in respect of sustainable development should not be undertaken in isolation because they are mutually dependent.
27. In terms of the economic role, the Council does not object to the loss of employment land and based on the evidence before me, I see no reason to disagree with this. Indeed, sufficient land for the remainder of the employment floorspace to be built out if needed would be retained. The proposal would make good use of previously developed land. These matters weigh in favour of the appeal proposal. There would be jobs created during the construction period albeit this would be a limited benefit given that it would not be sustained in the longer term.
28. The proposal would provide 13 affordable homes within the scheme. The Council considers that the reduced amount of affordable housing in comparison to the 2013 scheme would no longer be of sufficient benefit to outweigh any harm identified. The proposed amount at 29% would be very marginally below the Council's requirements of 30%. However, the Council does not object to the mix or tenure of the units that would be provided within the scheme. Even with the reduced numbers, I consider the provision of affordable housing would be a considerable benefit of the scheme. There would be open space within the

- proposal but I consider this would be largely for the benefit of the future occupiers of the housing rather than a benefit to the wider community.
29. Paragraphs 54 and 55 of the Framework explain that housing development should reflect local needs, and be located where it will enhance or maintain the vitality of rural communities. Policy S8 of the LDP refers to Langford as being a smaller village with few or no services and facilities, with limited or no access to public transport or employment opportunities albeit I note that the L&UNP refers to two other notable employers within the Parish including CML Microsystems adjacent to the appeal site. The part time, volunteer-run shop based in the Langford village church only sells basic goods and there is a village hall, nursery school (within the village hall) a hotel, museum and tea room. It is possible that the new residents would make use of them. However, these immediate facilities are extremely small scale in nature and the shop is a 'not for profit' venture and therefore the contribution the future occupiers would make would be very limited in this regard.
30. There is local concern that the proposal would be disproportionate to the overall size of Langford in particular. I note that there would be a total of 71 houses once the recent development of 11 houses close to Langford is complete. The Parish Council are also concerned that the occupiers of the development would be part of a separate 'gated' community. This type of impact is difficult to quantify given the difficulties of obtaining tangible evidence. The proposal would include improvements to the footpath to Langford and this would enable it to be used more easily by cyclists and make it safer for pedestrians. Nevertheless, given the level of services locally and the distance from the appeal site to these I consider that it would be very difficult for the new occupiers to become a part of the local community. The scheme would provide very limited opportunities for integration within the community and I am not persuaded on the evidence before me that it would support a strong, vibrant and healthy community.
31. In terms of the environmental role, Policy 3 of the submission L&UNP refers to proposals reinforcing the locally distinctive and aesthetic qualities of the buildings and landscape in the Parish. Bullet (b) of the policy refers to high walls and fences being discouraged. The Parish Council refer to the tall acoustic fence which would be located along the main road frontage of the proposed development. I accept that the fence would be a very visible feature in the short term and I consider it would have a strong urbanising effect on the rural character of the area. However, over time proposals for landscaping along this boundary would soften the effect of this fence and as a result there would only be very limited and temporary harm caused. I have also had regard to the potential effect of the existing permission for industrial units on the character of the area. There would be open space and landscaping as part of the proposal and the development would be set slightly away from the main road and some distance from the waterway.
32. A number of trees within the appeal site would be retained and the scheme would incorporate measures for improving and managing the biodiversity of the site. The Council does not object to the proposal in terms of the detailed design of the dwellings or the layout and I see no reason to disagree with this matter. The scheme would be located away from the nearby listed buildings and would be contained within a much smaller area than was proposed under the previous scheme.

33. In terms of accessibility, there are bus stops close to the appeal site, although presently they are difficult to access safely and the services are very limited in frequency. The proposal would provide direct access from the appeal site to the adjacent bus stop close to the appeal site and includes a proposal for a new bus lay-by. Some of these improvements to public transport may be used by those employed at the adjacent employment site although this could not be guaranteed.
34. As part of the UU, the appellants have proposed a package of measures to improve access to the site by public transport and improve highway safety. Contributions would be provided for transport improvements to secondary and post 16 years schools. The measures would also include a resident's travel pack which would include two free bus tickets per household for six months. A contribution would be provided towards the Blackwater Rail Trail.
35. There is a station at Hatfield Peverel just over 3 miles away which has a number of connections elsewhere. The larger settlements also have good transport links. There would be a contribution to improve the frequency of the bus/taxi service which runs past the site between Hatfield Peverel and Heybridge and Maldon. This would be for a period of up to five years and up to a maximum sum. I note that the potential for continued use of public transport options may not be guaranteed after these five years. Although the potential to increase frequency for the five years may maintain interest in this form of transport in the short term, it is also not certain whether residents would continue to use the service once the free tickets had expired.
36. I accept that the Framework does not exclude development from taking place outside settlement boundaries and it recognises that sustainable transport solutions will vary from urban to rural areas. I also note that the numbers of journeys for employment development would be greater than that associated with the proposed scheme. However, it is reasonable to assume that even with the proposed measures including education transport improvements in place that residents would be very reliant on the car to access services and facilities which are provided further away. Therefore, whilst the improvements to bus services are to be welcome, I consider they would not in themselves result in changes in modal split.
37. The previous Inspector considered that taking the measures proposed by the appellants into account, that scheme should not be dismissed solely on sustainability grounds. This is set out in paragraph 38 of that decision and is also referred to that this factor should not be a reason for refusal. I note that the Inspector at paragraph 51 also sets out that the proposed measures do not represent a significant improvement that could be considered a positive benefit in favour of the scheme. Also that decision was taken in the particular context of that scheme they were considering including the lack of five year supply at that time. It seems to me that the transport improvements simply act as mitigation for a site which is poorly related to services which would be required by future occupiers.
38. Policy T1 of the MDRLP sets out a series of criteria in relation to sustainable transport and the location of new development. The priority for new development is within defined boundaries. The explanatory text refers to development in rural areas being expected to take place within defined settlement boundaries and with access to public transport. Due to its remote

location away from the defined boundaries the proposal would conflict with Policy T1. The proposals for improvements to public transport would not be sufficient to encourage travelling by walking, cycling, public transport and motorcycles instead of private motor vehicles.

39. The proposal would be contrary to emerging Policy S1 of the emerging LDP which amongst other things delivers a sustainable level of growth that will meet local needs and deliver a wide choice of quality homes in the most sustainable locations. It would be contrary to emerging Policy S2 of the emerging LDP which refers a proportion of new development will be directed to the rural villages to support housing needs, local services and facilities and the rural economy. I accept that there would be some benefits of the development; however the environmental and social harm is such that on balance, the proposal would not represent sustainable development as set out in the Framework.

The Neighbourhood Plan

40. The L&UNP examination report has yet to be published and I note that there are outstanding objections to the L&UNP from the appellants. Therefore, I cannot afford full weight to its contents. I accept that given the stage in the process it is possible that the L&UNP would be subject to further change. However, whilst the plan does not benefit from the provisions of paragraph 198 of the Framework, it is nevertheless past the local authority publicity period. I consider its provisions should attach moderate weight in this appeal.
41. The Vision in the L&UNP includes reference to future development meeting the needs of the rural community whilst retaining the special qualities of the countryside and waterway setting. The Vision also refers to the historically dispersed nature of the Parish. The supporting text on page 28 of the L&UNP describes the housing in the parish as being characterised by small-scale incremental growth of individual plots dispersed across the area. Despite the reduction in the proposed housing numbers from the previous scheme, the proposal would represent a very significant proportion of number of houses within the Parish.
42. During consultation on the L&UNP a majority of local residents supported housing numbers of between 1 and 10 over the plan period. A limited number of residents did support a range from 11 to 50 houses. Housing on a single estate was generally not a preferred choice of residents. Although there are proposals to extend the settlement boundary of Langford within the L&UNP the scheme would remain outside of this. I accept that Policy 9 of the L&UNP does not specifically identify how many houses could be built or identify what contribution would be made towards the 345 'rural allocation' amount referred to in emerging Policy S2 of the LDP. However, the policy refers to small sites adjacent to existing dwellings for single plot housing for a new dwelling. It is clear to me that the plan as a whole does not envisage additional housing of this scale and in this location being built within the Parish. By its very nature the proposal would not be in accordance with Policy 9 of the submission L&UNP.

Other matters

43. I have considered the UU in the light of the tests contained in regulations 122 and 123 of the Community Infrastructure (CIL) Regulations 2010 and the tests

of paragraph 204 of the Framework. As well as the provision of affordable housing and transport improvements and measures, the UU makes provision for contributions towards early years, secondary and post 16 years education facilities. At the Hearing, the Council confirmed that the contributions were not affected by Regulation 123 in respect of pooling of contributions. I have not been provided with any evidence to the contrary. The contributions and measures would be necessary to make the development acceptable in planning terms, would be directly related to it and would be fairly and reasonably related in scale and kind.

Conclusion and balance

44. The site is allocated within the MDRLP for employment use and is proposed to be allocated for that use in the emerging LDP. The principle of development on the site is clearly well established and the retention of sufficient space to build out the remainder of the extant planning permission for employment use. The delivery of affordable housing within the District is also a benefit. These considerations weigh in favour of the appeal proposal. I accept that the proposal would not be so substantial or result in significant cumulative effect on new development proposed within the emerging LDP.
45. The Guidance sets out that arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits and any other material considerations. Paragraph 49 of the Framework requires housing applications to be considered in the context of the presumption in favour of sustainable development.
46. Sustainable development is about change for the better and paragraph 9 of the Framework makes it clear that pursuing sustainable development involves seeking improvements in people's quality of life. I have found that the proposal would not be sustainable development. There is some tension in the social role of providing affordable housing set against the location of the site and the lack of local services meaning that residents would be obliged to travel elsewhere for the vast majority of daily needs. The proposal would not comply with saved Policy T1 of the MDRLP and the appeal site is in a detached and isolated location. Langford has been placed near the bottom of the emerging LDP hierarchy in recognition of its limited facilities. The L&UNP envisages growth but that which is limited to a local need and the proposal would be contrary to the emerging L&UNP when considered as a whole.
47. The Framework indicates that there is the need to boost the supply of housing. However, I have found that the Council are able to demonstrate a five year supply of housing land which is a significant consideration in this appeal. Paragraph 14 of the Framework is not engaged in this case and the policies of the MDRLP are not out of date. Drawing all of the above points together, I consider there is no overriding requirement for a development of this size in this location.
48. I have had regard to all other matters raised, but have found nothing to alter my conclusion that the appeal should be dismissed.

L Gibbons

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr J Chesterman	CML Microsystems Plc
Mr M Lambert	Countryside Properties
Ms J Bean	G L Hearn
Mr N Ireland	G L Hearn
Mr C Shiele	G L Hearn
Mr A Markides	Odessey Markides

FOR THE LOCAL PLANNING AUTHORITY

Cllr M Durham	Deputy Leader, Maldon District Council
Mr E Addae-Bosompra	Appeals Officer, Maldon District Council
Mr T Parton	Team Leader, Maldon District Council
Mr G Sung	Maldon District Council
Ms Y Cheung	Maldon District Council

INTERESTED PERSONS

Mrs V Anfilogoff	Chair of Langford and Ulting Parish Council
Mrs J Clemo	
Mr L Magness	

DOCUMENTS AND PLANS SUBMITTED AT THE HEARING

- 1 North West Area Planning Committee Report 2 March 2015
- 2 APP/X1545/W/15/3003795
- 3 APP/X1545/W/15/3131798 & 3051122
- 4 Maldon District Council Planning Policy Advice Note V4, October 2015
- 5 Submission Version Langford & Ulting Neighbourhood Plan
- 6 Section 106 Unilateral Undertaking dates 1 December 2015
- 7 Maldon District Council Local Plan Examination In Public Interim Findings Letter, dated 3 June 2015
- 8 Maldon District Council Additional Proposed Minor Modifications (Appendix 14)
- 9 Maldon District Council Local Development Plan 2014, Schedule of Minor Modifications

- 10 & 10A Maldon District Council Five Year Housing Land Supply Statement September 2015 & (A) Maldon District Council Five Year Housing Land Supply Statement July 2015
- 11 Copy of presentation given by Mrs A Anfilogoff
- 12 Five Year Housing Land Supply Assessment Table
- 13 Maldon District Council Local Plan Examination Matter 2 Strategic Housing Growth Hearing Statement by the Council
- 14 Assessing Maldon's Housing Requirements NMSS August 2014
- 15 Identification of Objectively Assessed Needs for Housing Supplementary Statement September 2014
- 16 Maldon District Council Local Plan Examination Matter 2 Strategic Housing Growth: Implications of DCLG's 2012-based Household Projections
- 17 Maldon District Council Historic Rate of Windfall Delivery

Richborough Estates