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## Appeal Decision

Site visit made on 10 January 2017

by **J C Clarke BSc(Hons) BTP MRTPI**

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

Decision date: 6 February 2017

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**Appeal Ref: APP/X1545/W/16/3156961**

**Land off Spital Road, Wycke Hill, Maldon, Essex CM9 6SH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
  - The appeal is made by Mr John Baines, Linden Partnerships Ltd against the decision of Maldon District Council.
  - The application Ref RES/MAL/15/01055, dated 30 September 2015, sought approval of details pursuant to conditions Nos 1 and 3 of a planning permission Ref APP/X1545/A/14/2213988, granted on appeal on 17 December 2014.
  - The application was refused by notice dated 23 February 2016.
  - The development proposed is the demolition of existing buildings and erection of up to 120 residential dwellings with associated vehicular access.
  - The details for which approval is sought are described on the application as: '*Approval of reserved matters relating to the appearance, landscaping, layout and scale as required by Condition 1 and 3 of Outline Planning Permission ref. APP/X1545/A/14/2213988. This scheme relates to 108 residential units*'.
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### Decision

1. The appeal is allowed and the reserved matters are approved, namely the appearance, landscaping, layout and scale details submitted in pursuance of condition No 1 and 3 attached to planning permission Ref APP/X1545/A/14/2213988 dated 17 December 2014, subject to the further conditions appended to my decision.

### Procedural Matters

2. The Appellant has requested that to address minor inconsistencies between the submitted plans, revised versions of the 'Bin Strategy Plan', 'Materials Layout', 'Planning Layout', 'Site Layout', 'Garden Sizes Plan' and 'Planting Plan - Overview' plans be considered in the appeal<sup>1</sup>. Although these revised plans have been submitted after the Council made its decision, the changes indicated on them are of a minor nature. I have considered them in my decision as this approach does not prejudice the interests of any party.

### Main Issues

3. Under the existing outline planning permission, the principle of allowing up to 120 dwellings within the site has been established. The main issues in the

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<sup>1</sup> The revised drawing numbers are: BSP02 (Rev D); ML.02 (Rev E); PL.02 (Rev D); SL.02 (Rev F); GSP.02 (Rev D); and 5051/ASP/CD.1.6 (Rev I).

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appeal concern the details of the proposed development now submitted. They are:

- (a) the effect of the proposal on the character and appearance of the site and the surrounding area; and
- (b) whether the proposal would provide satisfactory living conditions for its future occupiers, particularly in respect of amenity space provision and noise.

## **Reasons**

### *Context*

4. In accordance with the relevant legislation I have determined the appeal in accordance with the Maldon District Replacement Local Plan (MDLRP) 2005 unless material considerations indicate otherwise. The National Planning Policy Framework (the 'Framework') is an important consideration in this respect.
5. I understand that the emerging Maldon District Local Development Plan (MDLDP) is at its examination in public stage. The Council has indicated that there are no 'major outstanding' unresolved objections to various policies including Policies S3 and S4, which set out its approach to place shaping and strategic growth.
6. Whilst the Appellant states that he has an outstanding objection to Policy S2 of the MDLDP, to which there is a cross reference in Policy S4, the broad thrust of Policies S3 and S4 appears to be firmly established within the emerging Plan. Paragraph 216 of the Framework advises that weight may be given to emerging policies according to a range of factors. In view of the advanced stage of the Plan, and as I have not been made aware of any significant unresolved objections to them, I have attributed substantial weight to Policies S3, S4, D1, D2 and H4 in my decision.
7. The South Maldon Garden Suburb Strategic Master Plan Framework (SMF) 2014 provides illustrative guidance and is not part of the development plan. I understand, however, that it underwent an extensive process of consultation before being finalised. It is an important material consideration. Whilst the Essex Design Guide<sup>2</sup> is not founded directly upon the policies of the more recently adopted MDLRP or the emerging MDLDP, it is also material to my decision, as is the South Maldon Garden Suburb Design Code 2016 (the 'Design Code').
8. A previous appeal, concerning a reserved matters submission for a scheme comprising 117 dwellings, was dismissed<sup>3</sup>. An important consideration in my decision is whether the concerns set out in that decision have been addressed.

### *Character and appearance*

9. The Framework and relevant local policies stress the need for new development to be well designed. The prominent location of the site on the edge of Maldon within the proposed South Maldon Garden Suburb further emphasises this need.

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<sup>2</sup> Essex Design Guide for Residential and Mixed Use Areas, Essex Planning Offices Association 1997

<sup>3</sup> Reference APP/X1545/W/15/129842

10. Compared to the 117 unit scheme which was dismissed at appeal, the proposal would have a revised layout with a reduced coverage of buildings. The massing of the larger buildings on the A414 frontage and around the entrance would be less continuous and some of the previously proposed balconies would be removed.
11. The density of the current proposal (about 37.5 dwellings per hectare<sup>4</sup>) would slightly exceed the guideline of 30-35 dwellings per hectare given in the SMF for the Garden Suburb as a whole. However, the number of dwellings proposed (108) falls substantially below the maximum figure of 120 referred to in the outline planning permission. Furthermore, the SMF states that development within the Wycke Meadow Character Area, of which the appeal site forms part, '*...should comprise higher density housing*<sup>5</sup>. The Design Code for this part of the Garden Suburb emphasises this, stating that the area should have an 'urban character' reflecting its proximity to Maldon centre<sup>6</sup>.
12. Many of the buildings would be located close to the highway edge and to each other and the 5 proposed 3-storey apartment blocks would be of substantial height and massing. A large proportion of the site would be covered by the proposed buildings, highways, parking courts and other development. Many of the gardens would be of limited size. However, these points do not mean that the development would fail to comply with the aspirations set out in the SMF or the Design Code. Indeed, the illustrations on pages 80 and 81 of the SMF, within the section giving guidance on the Wycke Meadow Character Area, indicate that shared surface streets, with tightly packed housing on either side, would be acceptable in this Character Area.
13. In addition, the built form of the proposed development would follow a well-defined style, using for example suitably varied roof heights and orientation. An effective range of facing treatments, including render in selected locations, would also help to break up the massing of the development and add variety. Whilst few existing trees would be retained within the main body of the site, substantial numbers of new trees and shrubs would be planted. Although the new trees would be close to surfaced areas there is no reason why, given the proposed aftercare arrangements, they should not become successfully established.
14. Extensive use would be made of parking courts within the development. However, these would not be excessively large and the layout would allow for a suitable range of surfacing materials within these and other areas. Given the high density development which is envisaged for the site, as set out in the SMF, and the need to make appropriate provision for the private car, I do not find the proposed use of parking courts to be objectionable. The 2 proposed play areas would also be adequately integrated into the proposed development and be suitably laid out.
15. The Council has raised concerns about the prominence and degree of continuity of built form proposed close to the main proposed site access and the Spital Road frontage. However, the buildings in this area, as elsewhere in the development, would contain suitable variety in their height, built form and

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<sup>4</sup> This figure is derived by dividing the number of dwellings proposed (108) by the site area in hectares quoted in the Council officer report (2.88)

<sup>5</sup> South Maldon Garden Suburb Strategic Masterplan Framework, paragraph 4.5.15

<sup>6</sup> Strategic Design Code: Maldon District – South Maldon Garden Suburb 2016 – page 58

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orientation. There would be gaps between the buildings, for example between blocks A and B and between block C and its adjacent buildings, and the impact of the buildings would be softened by a line of trees alongside the highway. Visual interest would be added for example by the use of bay windows on some buildings.

16. The northern-most part of the development, closest to the roundabout junction of Spital Road and Limebrook Way would not present a particularly strong 'outward looking' face, due to the proposed siting of a parking court in this area. However, the design of block D, the front of which would face northwards from the site, would not be unacceptable. Views towards this area from the roundabout and A414 would be framed and softened by existing planting outside the site some of which is on a raised bund. The proposed balconies on blocks D and E would add interest without being sufficiently prevalent in the development to cause an unacceptable urbanising effect.
17. The SMF indicates that a pedestrian link should be provided between the northern end of the site and the footway next to the A414, to provide access to the nearby supermarket and town centre. Pedestrians would be able to walk through the parking court in this part of the site to a gate on the site boundary. Whilst it would have been desirable for a more legible and attractively designed route to be provided in this area, I do not consider that the proposed arrangement would be unacceptable. As I understand that the Council owns the narrow strip of land between this part of the site and Spital Road<sup>7</sup> it should be able to address any 'desire line' which is created across it. The proposal would be designed in a way which would enable successful integration with future development in neighbouring parts of the Garden Suburb.
18. Having regard to all the above factors I consider that the proposal would not cause material harm to the character or appearance of the site and the surrounding area. It would accord with the relevant provisions of Policy BE1 of the MDLRP, Policies S3, S4, D1 and H4 of the emerging MDLDP, the SMF, Design Code and the Framework relating to this issue.

#### *Living conditions*

19. The key points in dispute in relation to this main issue relate to the amount and quality of garden and amenity space which would be provided and noise issues.
20. The aspiration for there to be higher density housing in this area, as set out in the SMF, indicates that there should be some flexibility with regard to garden sizes. Whilst the EDG sets minimum guideline figures this is not part of the statutory development plan and no equivalent standards have been drawn to my attention in the MDLRP, emerging MDLDP, SMF or Design Code. The EDG also indicates that smaller gardens may be accepted in some dwellings.
21. Most of the houses within the development would have gardens of at least 50 square metres (sqm), which is mentioned in the EDG as being a commonly accepted level of provision for small houses. Whilst many of the larger dwellings (of 3 bedrooms and upwards) would not have a private garden of 100 sqm as advised in the EDG, they would mostly have a garden of at least 75 sqm. Although the proposed apartment blocks would not meet the guideline of 25 sqm per unit mentioned in the EDG, and some of the area provided

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<sup>7</sup> Council officer report, paragraph 4.5.11

- particularly at block D would be lacking in privacy, they would all have some amenity space. Whilst two studio flats at plots 84 and 87 would lack any amenity space, these would represent a small proportion of the overall development.
22. All the dwellings would also be within easy walking distance of the proposed play areas which, although not private, would provide equipped external play facilities, and the Wycke Meadow nature reserve to the east of the site.
  23. With regard to noise issues a number of the proposed dwellings would be in close proximity to the A414. The parties have not disputed that this is a busy road which generates substantial traffic noise. On the evidence of my site visit I agree that this is the case.
  24. Compared to the previous 117 unit scheme, changes have been made to the position and design of the dwellings close to the A414 frontage to reduce the number of rooms affected by noise. The proposed private amenity areas serving affected dwellings would be at least partly shielded from noise by the buildings and the previously proposed balconies on some flats have been removed. Nevertheless, the bedrooms within 6 of the flats in blocks B and C would have windows facing solely towards the A414. Similar points apply to other habitable rooms in these blocks, plots 18 and 19 and in block D. The balconies on the eastern gable of block D could, whilst not facing the A414, also be exposed to high levels of noise.
  25. Condition 17 of the outline planning permission requires that noise levels in habitable rooms and outdoor areas must not exceed limits ranging between 35dBA and 45dBA. The Council has stated that on the basis of details which were previously submitted to it<sup>8</sup>, some habitable rooms in the currently proposed layout would be subject to internal noise levels, if windows are opened, of up to 56dBA. Whilst the Appellant has contested the basis on which the Council has assessed the noise issues, taking account of the proximity of the affected rooms to the A414 frontage there is a clear risk that the limits in condition 17 could only be achieved if windows in these rooms are kept closed. The Planning Practice Guidance does not encourage the creation of this situation.
  26. However, I note that under Policy S4 of the emerging MDLDP and the SMF, it is proposed to construct a new relief road which would bypass this part of the A414. Indeed, paragraph 2.64 of the emerging MDLDP identifies the delivery of this relief road as being 'essential' to accommodate the growth needs of the district. Although little detail has been provided of the funding for the new road, there is no reason to believe that it will not be delivered and cause a substantial reduction in noise levels on this part of the A414. Whilst the Council has indicated that the new road will not be completed before 2024 this would only be a few years after completion of the proposed dwellings. This point, together with the limited number of rooms affected compared to the development as a whole, limits the effect of the noise issues set out above.
  27. I also do not consider that the proposed tree planting, having regard to its location and extent, would have an unacceptable effect on the lighting of nearby dwellings.

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<sup>8</sup> Council statement, paragraph 4.43

28. Having regard to all these points, I consider that the proposal would have some shortcomings in terms of noise. However, in overall terms it would provide acceptable living conditions and accord with the provisions of Policy BE1 of the MDRLP, Policies S3, S4, D1, D2 and H4 of the emerging MDLDP, the SMF and the Framework related to this issue. It would also not conflict with Policy CON5 of the MDRLP, which relates to pollution created by new development rather than the living conditions of its future residents.

### **Conditions**

29. I have taken the Council's suggested conditions and the Appellant's comments on these into account in drawing up my list of conditions appended to this decision.
30. My condition 1, listing the approved plans, is required to specify the nature of the development which is permitted for the avoidance of doubt. I have revised the list of plans referred to in this condition to include the revised plans submitted with the appeal and the typographical points raised by the Appellant.
31. My condition 2, requiring the details of external materials to be approved, is required to ensure that the development would have a satisfactory appearance. My condition 3, concerning boundary treatment, is required for the same reason and to ensure that occupiers of the proposed development would have satisfactory levels of privacy. I have revised the wording of conditions 2 and 3 to enable the details to be submitted at a slightly later stage than suggested by the Council, to avoid unnecessary delay in the start of development. My condition 3 also links the timing of construction of the boundary treatments to the first occupation of the specific dwellings to which they relate.
32. My condition 4, concerning the proposed landscaping, is needed to ensure that the development has a satisfactory appearance. I have excluded those parts of the Council's suggested version of this condition which relate to the submission of further details of planting, aftercare and maintenance as these points are satisfactorily addressed in the details which have already been submitted. My revised version of this condition is included as the details submitted to date do not provide an enforceable implementation programme, linked to timescale of delivery of the overall development.
33. I have not included the Council's suggested condition 5, concerning a window in one of the plots, as this appears to relate to an earlier proposal.

### **Conclusion**

34. I have found that the proposal would not cause material harm to the character or appearance of the site and the surrounding area and would, in overall terms, provide acceptable living conditions for its occupiers. It would accord with relevant policies in the development plan and Framework, and with the aspirations for the site set out in the emerging MDLDP and SMF, and be consistent with the pursuit of sustainable development.
35. For the reasons given I conclude that the appeal should succeed.

*Jonathan Clarke*

INSPECTOR

**Appeal Ref: APP/X1545/W/16/3156961**

**Schedule of conditions**

- 1) The development hereby permitted shall be carried out in accordance with the approved plans listed in schedule 1.
- 2) No building works above floor slab level shall take place until written details or samples of all materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out using the materials and details as approved.
- 3) No building works above floor slab level shall take place until details of the height, design and materials of the treatment of all boundaries including gates, fences, walls, railings and piers have been submitted to and approved in writing by the local planning authority. The screening as approved shall be constructed prior to the first occupation of any dwelling to which it relates and be retained as such thereafter.
- 4) Notwithstanding the approved details, no building works above floor slab level shall take place until further details of the timing of implementation of the proposed landscaping works have been submitted to and approved in writing by the local planning authority. The landscaping shall be carried out in accordance with these further details.

**SCHEDULE 1) – LIST OF APPROVED PLANS REFERRED TO IN CONDITION 1**

<b>Drawing title</b>	<b>Reference</b>
Location Plan	7641/01
Boundary Details	BD02 Rev A
Bin Strategy Plan	BSP02 Rev D
Materials Layout	ML02 Rev E
Location Plan	LP.02
Planning Layout	PL02 Rev D
Site Layout	SL02 Rev F
Garden Sizes Plan (for information only)	GSP02 Rev D
Street Elevation	SE.02 Rev B
Block A Elevations	P.7-9.e1 P.7-9.e1 Rev A
Block A Elevations	P.7-9.e2 P.7-9.e2 Rev A
Block A Floor Plans	P.7-9.p P.7-9.p Rev A
Block B Elevations	P.1-6.e1 P.1-6.e1 Rev A
Block B Elevations	P.1-6.e2 P.1-6.e2 Rev A
Block B Elevations	P.1-6.e3 P.1-6.e3 Rev A
Block B Plans	P.1-6.p1
Block B Plans	P.1-6.p2
Block C Elevations	P.23-32.e1 Rev A
Block C Elevations	P.23-32.e2 Rev B
Block C Plans	P.23-32.p1 P.23-32.p1 Rev A
Block C Plans	P.23-32.p2 P.23-32.p2 Rev A
Block D Elevations	P.64-72.e Rev B

Block D Plans	P.64-72.p1 Rev B
Block D Plans	P.64-72.p2 Rev B
Block E Elevations	P.88-96.e Rev A
Block E Plans	P.88-96.p1
Block E Plans	P.88-96.p2
House Type 2B Floor Plans & Elevations	HT.2B.pe
House Type 3B5P Floor Plans & Elevations	HT.3B5P.pe Rev A
House Type A Elevations	HT.A.e
House Type A Floor Plans	HT.A.p
House Type AA Floor Plans & Elevations	HT.AA.pe1
House Type AA Floor Plans & Elevations	HT.AA.pe2
House Type B Floor Plans & Elevations	HT.B.pe
House Type C Floor Plans & Elevations	HT.C.pe
House Type D Floor Plans & Elevations	HT.D.pe1
House Type D Floor Plans & Elevations	HT.D.pe2
House Type D-a Floor Plans & Elevations	HT.D-a.pe3
House Type E-a Floor Plans & Elevations	HT.E-a.pe1 Rev A
House Type E Floor Plans & Elevations	HT.E.pe2 Rev A
House Type E Floor Plans & Elevations	HT.E.pe3 Rev A
House Type F Floor Plans & Elevations	HT.F.pe1
House Type F Floor Plans & Elevations	HT.F.pe2
House Type F Floor Plans & Elevations	HT.F.pe3 Rev A
House Type F4 Floor Plans & Elevations	HT.F.pe.4
House Type G-a Floor Plans & Elevations	HT.G-a.pe
House Type H Floor Plans & Elevations	HT.H.pe
House Type J Floor Plans & Elevations	HT.J.pe1
House Type J Floor Plans & Elevations	HT.J.pe2
Bin Store (Block C)	BS.01 Rev A
Bin Store (Block D)	BS.02
Double Carport (Plot 98)	CP.01
Double Carport	CP.02
Carport with Walkthrough	CP.03
Twin Garage	GAR.02
Single Garage	GAR.03
Planting Plan Overview	5051/ ASP/CD.1.0 Rev I
Planting Plan 1 of 11	5051/ ASP/CD.1.1 Rev I
Planting Plan 2 of 11	5051/ ASP/CD.1.2 Rev I
Planting Plan 3 of 11	5051/ ASP/CD.1.3 Rev I
Planting Plan 4 of 11	5051/ ASP/CD.1.4 Rev I
Planting Plan 5 of 11	5051/ ASP/CD.1. Rev I
Planting Plan 6 of 11	5051/ ASP/CD.1.6 Rev I
Planting Plan 7 of 11	5051/ ASP/CD.1.7 Rev I
Planting Plan 8 of 11	5051/ ASP/CD.1.8 Rev I
Planting Plan 9 of 11	5051/ ASP/CD.1.9 Rev I
Planting Plan 10 of 11	5051/ ASP/CD.1.10 Rev I
Planting Plan 11 of 11	5051/ ASP/CD.1.11 Rev I
LAP Detail Plan	5051/ ASP/CD.1.12 Rev I
LEAP Detail Plan	5051/ ASP/CD.1.13 Rev I
Tree Protection Plan	5051/TPP/01 Rev B
Parking Matrix	
Accommodation Schedule	



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Artist's Illustration – Site Entrance (For Illustrative Purposes Only)	Wycke Entrance Final A 15012
Artist's Illustration – POS Area (For Illustrative Purposes Only)	Wycke POS Final A 15012
Artist's Illustration – Spital Road Frontage (For Illustrative Purposes Only)	Wycke Road Final A 15012

Richborough Estates