
Appeal Decision

Site visit made on 11 November 2014

by Nick Palmer BA (Hons) BPI MRTPI

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

Decision date: 3 December 2014

Appeal Ref: APP/X1545/A/14/2223566

Manor Farm, The Avenue, North Fambridge, Chelmsford CM3 6LZ

- 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 A & M Raven against the decision of Maldon District Council.
 - The application Ref OUT/MAL/13/00473, dated 21 May 2013, was refused by notice dated 11 February 2014.
 - The development proposed is up to 30 N^o dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr A & M Raven against Maldon District Council. This application is the subject of a separate Decision.

Procedural Matter

3. The proposal is for outline planning permission with all detailed matters reserved. I have considered the appeal on this basis and have treated the layout plan submitted with the application as being for indicative purposes only.

Main Issues

4. The main issues in the appeal are:
 - i) the viability of the proposed development and its implications for the provision of the required foul drainage infrastructure;
 - ii) whether or not the proposal is premature in advance of the adoption of the Maldon District Replacement Local Plan and preparation of the Rural Allocations Development Plan Document; and
 - iii) whether or not adequate provision would be made for affordable housing.

Reasons

Viability

5. The parties agree that the Council does not have a five-year supply of deliverable housing sites as required by paragraph 47 of the National Planning

- Policy Framework (the Framework). Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up-to-date in these circumstances. It is therefore the case that policies in the Maldon District Replacement Local Plan (RLP) (2005) concerning housing supply are out of date.
6. The draft Maldon District Local Development Plan (LDP) has not yet been found to be sound but the Council has resolved to regard it as a significant material consideration. Because it has not been formally adopted, only limited weight can be given to its policies at this stage.
 7. Anglian Water Services have advised that the existing foul sewerage system does not have sufficient capacity to accept the discharge from the proposed development. A Joint Position Statement has been issued by Anglian Water Services, the Environment Agency and Essex County Council which advises that new mains and a new pumping station would be required. The Water Recycling Centre at South Woodham Ferrers has capacity to accept the discharge from the development subject to the provision of the requisite infrastructure.
 8. The estimated cost of that infrastructure is approximately £2 million. The appellants state that the viability of the proposal cannot be assessed before the details of the development are known, but have not expressed concern that it would not be viable. Although a detailed viability calculation would not be possible at this stage, it is nevertheless likely that viability in broad terms will be known and it is ultimately for the appellants to decide whether the proposed development is viable.
 9. The Planning Practice Guidance advises¹ that understanding viability is critical to the overall assessment of deliverability of a Local Plan. The Council has identified North Fambridge as a location for 75 dwellings in the LDP but no evidence has been provided to suggest that the proposed development or the proposed housing allocation as a whole would not be viable as a result of the drainage infrastructure requirement.
 10. The required foul drainage infrastructure can reasonably be secured by means of a negatively worded condition. The development could only go ahead if the infrastructure were provided beforehand and therefore the viability of the development would not affect the delivery of that infrastructure.
 11. The appellants have suggested that the provision of a sewage treatment facility on the site may be a further option to be considered alongside those put forward by Anglian Water Services. This may be the case but no evidence as to the feasibility of this is before me.
 12. For the above reasons the proposed development would accord with saved policy CON5 of the RLP in terms of avoiding pollution and with draft policy I1 of the LDP which requires the provision of necessary infrastructure. Because saved policy CON5 is not directly concerned with the supply of housing and because it is consistent with paragraph 120 of the Framework, weight can be given to that policy.

¹ ID 10-001-20140306

Prematurity

13. The adoption of the LDP is at an advanced stage and this includes draft policy S2 which makes provision for 75 dwellings to be built in North Fambridge. Interested parties have expressed doubt as to the suitability of the village to accommodate further development but the Council has not provided evidence regarding the extent to which there are unresolved objections to draft policy S2. The Planning Practice Guidance² advises that circumstances of prematurity are likely to be limited to situations where the development is so substantial, or its cumulative effect would be so significant that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan. The proposal is not so substantial that it would pre-determine decisions about the location and scale of housing. On this basis the proposal would not be premature in the context of the adoption of the LDP.
14. A Rural Allocations Development Plan Document (DPD) is to be produced following formal adoption of the LDP but the submissions indicate that work has not yet commenced on that Plan. The time scale for its adoption is therefore likely to be significant.
15. The Council and its statutory consultees have no objection in principle to the proposal in terms of highway safety, flood risk and other matters subject to the imposition of conditions. There is no evidence that the site would be considered unsuitable for development in the future DPD or that there is a preferable site.
16. The appellants have pointed out that the Council's Infrastructure Delivery Plan identifies a capacity in North Fambridge for a further 125 dwellings within the constraints of existing infrastructure. It is clear however that foul drainage infrastructure is required. The proposal would secure that provision and no evidence is before me to suggest that it would prejudice the achievement of further infrastructure in the village.
17. Given that the preparation of the DPD has not commenced the proposal cannot reasonably be considered to be premature in relation to that document. For these reasons the proposal would not be premature in advance of the adoption of the LDP and preparation of the DPD.

Affordable Housing

18. The Unilateral Undertaking (UU) would secure the provision of 30% affordable housing on site which is a requirement of saved policy H9 of the RLP. I am satisfied on this basis that the UU is necessary and that it meets the other tests in paragraph 204 of the Framework.
19. The UU specifies that 28% of the dwellings would be for social renting and that 2% would be for shared ownership. On the basis that 30 dwellings would be built, 2% would equate to 0.6 of a dwelling. The Council has subsequently requested a change to the proportions of dwellings to be provided for social renting and shared ownership but this would still result in an imprecise figure for each type of tenure. For this reason the UU is insufficiently precise and cannot be relied upon to deliver the required affordable housing tenures.

² ID 21b-014-20140306

20. Paragraph 50 of the Framework requires that local planning authorities should plan for a mix of housing and to identify the tenure of housing that is required in particular locations. For the reasons given the proposal would not make adequate provision for affordable housing in terms of the mix of housing tenures to be provided.

Other Matters

21. Interested parties have expressed concern that there are insufficient facilities in the village and that public transport services are inadequate. The Council has however identified the village as being suitable for further housing development on the basis that it has good accessibility by rail to larger centres and is close to South Woodham Ferrers which has a range of facilities.
22. Development has already taken place to the south of The Avenue and the site would form a continuation of that developed area. The Council does not object to the development in terms of its effect on the landscape and the character of the village and I have no reason to differ.
23. The Extended Phase 1 Habitat Survey demonstrates that the proposal would not affect protected species or habitats but recommends the implementation of ecological mitigation measures which could be secured by means of a planning condition.
24. The highway authority has no objection to the development subject to conditions regarding the provision of an access road which meets its standards. I noted on my site visit that there is good visibility in both directions and that the provision of the access requirements as recommended by the highway authority would be achievable.

Balance and Conclusions

25. Paragraph 14 of the Framework requires that where the development plan is out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole.
26. Because the proposal would not adequately provide for affordable housing it would fail to meet the needs of the community and would not be sustainable. The provision of drainage infrastructure would be a benefit in terms of providing for other development to take place in North Fambridge but given that the LDP has not been adopted little weight can be given to this. For these reasons, the harm in terms of affordable housing would outweigh the benefits in terms of overall housing and infrastructure provision. On this basis I conclude that the appeal should be dismissed.

Nick Palmer

INSPECTOR