



# The Planning Inspectorate

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Your Ref: FUL/MAL/13/00552  
Our Ref: APP/X1545/A/14/2213766  
Date: 23 January 2015

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Dear Sir / Madam

## **Town and Country Planning Act 1990**

### **Appeal by Mr R Roe**

**Site at Land South Of Strathmore Road, Fambridge Road, North Fambridge, Chelmsford, CM3 6NB**

I enclose a copy of our Inspector's decision on the above appeal together with a copy of the decision on an application for an award of costs.

If you have queries or feedback about the decision or the way we handled the appeal, you should submit them using our "Feedback" webpage at <http://www.planningportal.gov.uk/planning/planninginspectorate/customerfeedback/feedback>.

If you do not have internet access please write to the Quality Assurance Unit at the address above.

If you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

You should also note that there is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly. Please contact the Administrative Court for further information.

Yours sincerely



Bridie Campbell-Birch

COVERDL2

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Richborough Estates



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## Appeal Decision

Site visit made on 20 October 2014

**by Claire Victory BA (Hons) BPI MRTPI**

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

Decision date: 23 January 2015

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**Appeal Ref: APP/X1545/A/14/2213766**

**Land south of Strathmore Road, Fambridge Road, North Fambridge, Chelmsford CM3 6NB**

- 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 Mr R Roe against the decision of Maldon District Council.
  - The application Ref FUL/MAL/13/00552, dated 10 June 2013, was refused by notice dated 5 September 2013.
  - The development proposed is residential development comprising the erection of 10 no. flats, 22 no. Houses and village shop with flat over. Resurfacing of Strathmore Road and construction of access road and parking.
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### Decision

1. The appeal is dismissed.

### Application for Costs

2. An application for costs was made by Mr R Roe against Maldon District Council. This application is the subject of a separate Decision.

### Procedural Matters

3. A unilateral undertaking has been submitted which I have taken into account.
4. Amended plans were submitted by the appellant after the application was determined by the Council, shown in detail on site and block plan 1025/10.D, and in consequential amendments on other drawings submitted. The change would have the effect of moving the access road further away from the rear garden of Tipitina, and siting the proposed parking bay further east, in front of the shop. The proposed change is minor in relation to the scheme as a whole, and it would not worsen the relationship between the proposed development and nearby properties in comparison to the scheme originally submitted. On that basis I do not consider anyone would be prejudiced, and thus have assessed the appeal scheme on the basis of the amended plans.

### Main Issues

5. The main issues in the appeal are:
  - The effect of the proposal on the character and appearance of the surrounding area;
  - The adequacy of measures for surface water and foul drainage;

- Whether the proposal represents a sustainable form of development; and
- The effect of the proposal on the living conditions of neighbouring occupiers with particular regard to noise and disturbance;

## Reasons

### *Character and appearance*

6. The appeal site is formed of an open field in agricultural use. It is bordered by Strathmore Road to the north, a private road accessed from Fambridge Road. To the west are the rear gardens of properties on Fambridge Road, and to the south and east are open fields. Residential development in the vicinity of the site is predominantly ribbon development of large detached or semi-detached dwellings within spacious plots, and there are two properties on Strathmore Road in the vicinity of the appeal site, both set within substantial grounds.
7. The proposal would involve the erection of 33 dwellings and a shop, formed of a series of blocks comprising buildings of one and two storeys in height and arranged around a central access road. Several car parking areas are proposed within the site, including one adjacent to the rear of dwellings on Fambridge Road.
8. The main parties dispute the relevance of density guidance within Policy H6 of the Maldon District Replacement Local Plan (LP) (2005), which was based on advice in PPS 3 now superseded by the National Planning Policy Framework (the Framework). The Framework does not specify densities but advises that local planning authorities should set out their own approach to reflect local circumstances. I therefore consider Policy H6 provides a reasonable starting point to assess whether the scheme would be appropriate to the character and scale of surrounding development.
9. LP Policy H6 is also sufficiently flexible to respond to local context. It states that development at a lower density than the broad range of 30-50 dwellings per hectare specified may be appropriate for some rural settlements including North Fambridge where high density development would compromise the existing character and setting of the surrounding area. In these particular site circumstances, although the appeal scheme includes one and two storey properties, the design and layout of the terraced blocks required to achieve the proposed density would not reflect the character of properties fronting Fambridge Road or Strathmore Road, which are mostly detached and set in substantial grounds. Furthermore, the Framework identifies density as just one of a range of factors to help deliver high quality design outcomes, and other issues such as massing, layout, landscaping and the relationship with surrounding buildings and open space must also be taken into consideration.
10. In terms of the wider setting of the appeal site, it is located within a Special Landscape Area, defined for its special landscape quality. The Landscape Character Assessment<sup>1</sup> for the area refers to the open, panoramic views to the north which create a sense of space and tranquility, and highlights the potential for new development around the fringes of North Fambridge to be highly visible from the character area. It recommends that the impact on views toward potential new development are taken into consideration in planning decisions.

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<sup>1</sup> Landscape Character Assessment (2006)

11. I observed the site and its surroundings from the sea wall, and Blue House Farm Nature Reserve to the south. Given the intervening distance of about a mile, the sporadic screening from hedgerows and trees, and the backdrop of other development on either side of the railway line to the north of the appeal site, the proposed one and two storey buildings would be relatively indistinct from the existing built up area when viewed from the sea wall, which is several metres above the prevailing ground level in that location. However, within the nature reserve, closer to the south and east of the appeal site, the development would be highly visible and would significantly harm the open character and sense of tranquility experienced within the character area.
12. Further to the above, when approaching the site on Fambridge Road from the south, and when viewed from the public open space nearby, the development would appear as an intrusion into the open countryside, and as a more intensive form of development than adjacent properties, rather than as a transition from the built up area to the open countryside. As a result it would have an urbanising effect on the open, rural character of the landscape.
13. I conclude that the development would cause material harm to the character and appearance of the surrounding area. It would be contrary to LP Policy BE1, which requires development outside development boundaries to make a positive contribution to the landscape and open countryside and to be compatible with their surroundings; LP Policy CC11, insofar as it requires that development would not adversely affect the open and rural character of the area, and Policies CC6 and CC7 which seek to protect the landscape character of the area. These policies are consistent with those parts of the Framework, that seek to protect and enhance valued landscapes and recognise the intrinsic beauty and character of the countryside.

#### *Surface water and foul drainage*

14. The Council identify that the appeal site lies within Flood Zone 1, and is less than 1 hectare in area. Accordingly general advice from the Environment Agency<sup>2</sup> is that the surface water run-off should be managed within the site and potential flood risk impacts on the surrounding area should be mitigated. Likewise paragraph 103 of the Framework requires that development would not increase the risk of flooding elsewhere.
15. About half of the site area would consist of buildings and land with an impermeable surface, and the Flood Risk Assessment (FRA) submitted with the appeal indicates that if the appeal were allowed there would be approximately 160% increase in peak flows and storm volumes within the site, taking into account an anticipated 30% increase in rainfall due to climate change and assuming a 100 year design life for the residential properties.
16. Although at the time of determining the application there was no objection from Anglian Water as sewerage authority, a statement has since been published jointly with the Environment Agency and Essex County Council<sup>3</sup>, which indicates North Fambridge has reached capacity for surface water and foul drainage, and recommends that no new connections to the foul and combined sewer take place without additional investment. As a result the

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<sup>2</sup> Environment Agency Standing Advice and Guidance, as referred to in the appellant's FRA

<sup>3</sup> Joint Position Statement on Development in North Fambridge – Prepared by Anglian Water Services, the Environment Agency and Essex County Council (lead Local Flood Authority) (January 2014)

development would exacerbate existing drainage problems in the locality, without adequate measures in place to mitigate site impacts.

17. The FRA suggests that the increase in surface water run-off can be dealt with by storage and attenuation measures, and could be achieved either by a surface water pond or a combination of an oversized drainage network with metro or storm cells below the parking areas. No details of proposed sustainable drainage systems were submitted with the application but the appellant contends this matter could be dealt with by a condition.
18. However, although the appellant owns adjoining land, there are no proposals before me to show where the sustainable drainage system would be located. In addition, the joint statement is clear that no new connections to the sewer network are to take place. Whilst the Council are currently considering the potential for further development in this area through a review of the LP, there does not appear to be a realistic prospect at present that the required investment to resolve the identified drainage problems would be forthcoming, and no indication of when that might be. Consequently, if the appeal was allowed there would be a significant risk of surface water run-off from the site increasing flood risk elsewhere in the locality.
19. The appellant has referred to a housing scheme nearby at Manor Farm, The Avenue, where the Council's planning officer recommended that surface water drainage could be dealt with by condition. I do not know the full details of that scheme, but in the event planning permission was refused by the Council for that scheme at least partly on the basis of insufficient provision for surface water and foul drainage. As such this matter does not alter my overall conclusions in relation to this main issue.
20. I conclude that the development would fail to make adequate provision for surface water and foul drainage. Thus it would fail to accord with the Framework and the Technical Guidance on flood risk, insofar as flooding from any source may be a reason to refuse planning permission, and in particular if there is insufficient evidence to show that suitable drainage arrangements can be made.

*Whether sustainable development*

21. The site is just outside the settlement boundary of North Fambridge. LP Policy H1 states that new housing will not be allowed outside development boundaries unless it complies with other policies in the plan, but from the evidence before me, the Council has not demonstrated a 5 year supply of deliverable housing sites. Thus in accordance with paragraph 49 of the Framework, applications should be considered in the context of the presumption in favour of sustainable development, and development proposals cannot be refused solely on the basis that the development lies outside the development boundary.
22. In accordance with paragraph 14 of the Framework, where relevant policies are out of date, permission should be granted unless any adverse impacts significantly and demonstrably outweigh the benefits of the development, when assessed against the policies in the Framework taken as a whole.
23. The Council concede that the site location is sustainable. It is about 250 metres from the railway station, and bus services run from Fambridge Road, and nearby Kitts Hill, albeit relatively infrequently, to larger centres such as

Maldon and South Woodham Ferrers. School bus services also provide access to schools in nearby villages. It has been pointed out that one school is at capacity, but Essex County Council's Infrastructure Planning Officer notes that there are spaces in another. In any case, given the projected increase in the number of dwellings in the village infrastructure improvements would be required to remedy any existing deficiencies and provide the necessary infrastructure for population growth.

24. The provision of new housing would be a social benefit, and would have a slight economic benefit in the short term arising from construction and in the longer term through the support of shops and local services.
25. Turning to the environmental impacts of the appeal scheme, I have found that the development would cause significant harm to the character and appearance of the area and would not provide adequate surface water and foul drainage. In these particular site circumstances, these harms would outweigh the positive benefits offered by the scheme. The definition of sustainable development in paragraph 7 of the Framework has three dimensions, namely social, economic and environmental, that are expected to be delivered equally. Clearly it is not sufficient to comply with only two of the three dimensions, and as the proposal would cause harm to the environment for the reasons I have described it would not constitute sustainable development.
26. Taking all the above matters into account, I conclude that the development would not represent a sustainable form of development. Thus it would fail to accord with national policy.

#### *Effect on living conditions*

27. The Council are concerned that the development would give rise to undue noise and disturbance to adjacent residents. As the appeal site is currently agricultural land, there will inevitably be an increase in noise and activity arising from its development for residential and commercial use, and an increase in vehicle movements on Strathmore Road. The location of a parking area close to the rear of properties on Fambridge Road also means that there would be a noticeable increase in comings and goings.
28. However, it seems to me that given the separation distances between the rear of those dwellings and the parking area, and the provision of a landscaping buffer at the edges of the site, there is nothing to suggest that the development would leave residents vulnerable to an unacceptable level of noise and disturbance. As such, I find no conflict with LP policy BE1, insofar as it relates to considerations of amenity. This policy is consistent with the Framework which requires a good standard of amenity for existing and future occupiers of all land and buildings.

#### **Other Matters**

29. The appellant has submitted a signed and executed unilateral undertaking relating to the provision of 13 affordable housing units, and to the maintenance of amenity areas including car parking and grassed or landscaped areas. This provision of 40% affordable housing would exceed the requirement in LP Policy H9 which seeks 30% of the total number of dwellings in a development to be affordable.

30. The Council accepts that there is a shortage of affordable housing in the District and that the proposal would contribute to meeting this need. I am therefore satisfied that the contribution would be necessary to make the development acceptable in planning terms, would be directly related to the development and fairly and reasonably related in scale and kind. The tests in paragraph 204 of the Framework would therefore be met. The provision of affordable housing would be a benefit, but it would not be sufficient to overcome the significant harm that I have described.
31. A significant increase in surface water run-off could also affect water quality in the surrounding area, but Natural England confirmed that the Essex Estuaries Special Area of Conservation and Crouch and Roach Estuaries Ramsar and Special Protection Area and Site of Special Scientific Interest would not be affected by the development.
32. North Fambridge Parish Council point out that the appellant has no legal right to re-surface Strathmore Road which is a private road or to lay drainage or sewage pipes. These are private matters between the parties concerned, although they would need to be resolved before any permission to develop the site could be implemented. They are not matters which have contributed to my decision not to grant planning permission.
33. I also note that the area of assembly in the event of evacuation appears to be below the 5m water mark, and thus in an area liable to flood risk. However, if the development was acceptable in all other respects a condition requiring the submission of a Flood Management Plan including evacuation procedures could be imposed to could overcome this concern.
34. Finally, the Council also referred to policies within the draft Maldon District Local Development Plan in its statement. However, these policies were not included on the Decision Notice. Moreover, the plan examination has not yet concluded and I do not have evidence before me of written representations in regard to the aforementioned policies. As such I have afforded them little weight in reaching my decision.

### **Conclusion**

35. I have found in the appellant's favour in relation to the substantive living conditions issue raised by the Council. However, having regard to all available evidence, including the Joint Position Statement on Development in North Fambridge, my site observations and all the representations received in respect of the proposal, the proposal would be unacceptable due to its impact on the character and appearance of the surrounding area and surface water conditions in the locality. These factors would outweigh the potential benefits that would be provided by additional housing.
36. For the reasons set out above, and having due regard to all other matters raised, I conclude that the appeal should be dismissed.

*Claire Victory*

INSPECTOR





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## Costs Decision

Site visit made on 20 October 2014

**by Claire Victory BA (Hons) BPI MRTPI**

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

**Decision date: 23 January 2015**

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**Costs application in relation to Appeal Ref: APP/X1545/A/14/2213766  
Land south of Strathmore Road, Fambridge Road, North Fambridge CM3  
6NB**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr R Roe for a full award of costs against Maldon District Council.
  - The appeal was against the refusal of the Council to grant planning permission for residential development comprising the erection of 10 No flats, 22 No houses and village shop with flat over. Resurfacing of Strathmore Road and construction of access road and parking.
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### Decision

1. The application for an award of costs is refused.

### Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. Mr Roe applied for an award of costs. He contends that the Council behaved unreasonably in adding an additional reason for refusal that was not included in a previous refusal on 26 February 2013 for a similar development with fewer dwellings,<sup>1</sup> namely on the basis of inadequate surface and foul drainage details, when the Council did not request such information either at the validation stage or prior to the determination of the planning application.
4. Anglian Water as sewerage authority, provided the same consultation response as summarised within the officer reports, which confirm that no objection was raised to either scheme. However, whilst no objection to application FUL/MAL/12/00542 was raised by the Council with regard to flood risk, the officer report for the appeal proposal states that in the absence of available land within the application site that could accommodate a suitable drainage scheme this amounts to a material objection to the proposal.
5. The Council's change in stance in the period since the first application was refused, and the inclusion of an additional reason for refusal is not explained in the officer's report. Nor do I have any evidence before me that the Council requested additional details of surface and foul drainage prior to the determination of the application. Consequently there was no clear justification for the addition of a new reason for refusal of flood risk for a scheme very

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<sup>1</sup> FUL/MAL/12/00542

- similar to the earlier scheme for more dwellings, notwithstanding the further information that has since come to light in relation to the adequacy of the sewerage network.
6. The applicant has also pointed out that Council officers recommended another housing scheme on a different site for approval, with sustainable drainage measures to be dealt with by condition. However, the Council consider that the site circumstances for that scheme were different in that sustainable drainage measures could be incorporated within the site itself, and in the event the Council refused the application. Furthermore, there is no requirement on the Council to explain why its members reached a different view to the planning officer's recommendation.
  7. Moreover, whilst the applicant referred to the option of creating a sustainable drainage scheme on land owned by him adjacent to the appeal site, no details were provided or unilateral undertaking submitted to provide such a scheme off-site. Thus there would be no certainty that adequate surface and foul drainage would be provided to reduce surface water run-off within the local area. Accordingly no unreasonable behaviour has been demonstrated by the Council this respect.
  8. With regard to the second reason for refusal, the applicant submits that harm to the living conditions of nearby residents through noise and disturbance has not been substantiated. However in the officer report the Council described the existing rural tranquility experienced by residents living nearby and the potential noise and disturbance that would be created by the appeal proposal, particularly arising from increased use of the access road and the proximity of the parking area to the rear boundary of properties. Thus it was not unreasonable of the Council to take into consideration the concerns of local residents in respect of the impact of the scheme on their living conditions.
  9. Taking all the above into account, I find that unreasonable behaviour has not been demonstrated with regard to the Council's consideration of a nearby housing scheme or their articulation of the second reason for refusal of the appeal scheme, but I consider the Council did behave unreasonably by introducing the matter of flood risk as an additional reason for refusal of the appeal scheme that had not been identified on a previous, very similar application on the same site.
  10. Paragraph 30 of the Guidance requires that the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. However, the matter, having been considered in the light of evidence submitted by both parties to the appeal, led to a reason why the development should not be permitted. It was, therefore, a relevant and material matter of significance. Consequently, I do not think that the expense incurred by the applicant in addressing it can be regarded as unnecessary or wasted. For this reason, and having regard to all other matters raised, an award of costs is not justified.

*Claire Victory*

INSPECTOR