



Appeal Decision

Site visit made on 18 May 2015

by **R W Allen B.Sc (Hons) PGDip MRTPI**

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

Decision date: 29 June 2015

Appeal Ref: APP/X1545/W/14/3000595

Land Opposite 34 Hall Road, Great Totham, Essex CM9 8NN

- 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 Malcolm Payne (J&M Developers) against the decision of Maldon District Council.
 - The application Ref OUT/MAL/13/00786, dated 21 August 2013, was refused by notice dated 3 July 2014.
 - The development proposed is erection of 50 no. market and affordable housing units, and a community pocket park, accessed from existing Hall Road access point.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Malcolm Payne (J&M Developers) against Maldon District Council. This application is the subject of a separate Decision.

Preliminary Matter

3. The Interim Findings by the Development Plan Inspector on the Maldon District Local Plan (MDLP), which is intended to replace the Maldon District Replacement Local Plan 2005 (MDRLP), concluded that the plan is unsound. The Council disputes the Findings and says it is examining its options. That aside, the Council says that the Inspector found fault only with Policy H6 (Provision for Travellers). In doing so, he did not dismiss the remainder of the plan including its housing policies, and as such considerable weight should continue to be afforded to the emerging MDLP in line with the requirements of Paragraph 216 of the National Planning Policy Framework (the Framework). The appellant says the Inspector did not state he found the remainder of the plan to be sound. The appellant also says the Inspector in fact criticised the Council understanding of its housing needs in its area; and that no weight should therefore be afforded to it.
4. In the appeal before me, the Council has relied only on Policies S8 and D1 from the emerging MDLP. Policy S8 says amongst other things that the countryside will be protected for its landscape value and development will only be granted where the intrinsic character and beauty would not be adversely impacted. Policy D1 says new development must respect and enhance the character and local context and will be permitted if compatible with their surroundings in

terms of layout, site coverage, design and scale, visual impact and relationship to important landscape, and that it would make a positive contribution to the landscape and open countryside.

5. I find both Policies are broadly similar and largely replicate MDRLP Policies CC6 and BE1, and they are consistent with the Framework. I therefore see no harm in affording weight to these Policies in my decision, and I am satisfied that in taking this approach it would not cause injustice to the parties.

Main Issues

6. The main issue is:

- The effect of the proposed development on the character and appearance of the area having specific regard to landscape character and countryside setting.

Reasons

7. It is common ground that the Council is unable to demonstrate that it has a 5 year supply of deliverable sites for housing to meet its housing requirements; the parties agreeing that the Council can only demonstrate a 2.8 year supply. In such circumstances, Paragraphs 49 and 14 of the Framework prevail. Paragraph 49 says that the relevant policies for the supply of housing should not be considered up-to-date. Paragraph 14 says that permission for development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. I agree, and have taken the same approach in my decision, and subsequently I have given little weight to MDRLP Policy H1 which the Council cites in its decision. I find the benefits the proposal would bring in delivering new housing weigh heavily in the scheme's favour.

Effect on character and appearance and landscape setting

8. The appeal site is open land adjacent to, but outside of the settlement boundary of Great Totham. The site is accessed from Hall Road. Residential properties in Hall Road, Millways and Seagers abut the site's west and north west boundaries. Open countryside lies further to the north and east.
9. The Maldon Landscape Character Assessment 2006 (MLCA), which informs MDRLP Policy CC6, identifies that the landform of the area is characterised by rolling hills with some steep ridges and irregular field patterns; with landscapes containing deciduous woods and hedges, undulating fields and occasional conifer tree belts. I saw that the appeal site, which was a former quarry but restored to its natural state some years ago, had a rugged and uneven terrain, covered in vegetation, with taller tree and hedge planting on its boundaries. Whilst it contrasted in character with the wider countryside, I nevertheless found it to be an attractive and visually pleasing landscape which positively contributes to the character and appearance of the area.
10. While I note that the submitted layout drawing is indicative, having regard to the appellant's design and access statement it is reasonable to conclude that the site would be built out along these lines; and I see little alternative ways in which the quantum of units proposed could be otherwise accommodated within the site area. The drawing illustrates that the majority of the site area would be covered in built form. Although a proposed 'pocket park' is shown, the

proposed development would nonetheless appear largely devoid of open space or visual relief. There would also seem to me to be little space or opportunity for any significant and meaningful landscaping to establish either within the development or along its boundaries, and I found no persuasive evidence before me to suggest otherwise.

11. For those reasons, I find the proposed development would appear as a harsh and dominant residential estate, resulting in an abrupt transition between the rural landscape and the village. It would have an inappropriate and insensitive urbanising effect on the settlement edge which would poorly integrate with and cause significant harm to the landscape setting and the character and appearance of the adjoining open countryside.
12. I acknowledge that the land east of the appeal site, outlined in blue on the drawing, would be extensively landscaped as part of the proposed development. Whilst this would appear as an attractive feature in its own right and would likely improve the quality and appearance of the overall countryside, it would not be capable of softening the residential scheme or improving its insensitive relationship with the adjoining countryside.

The Planning Balance

13. The Council cannot demonstrate a 5 year supply of housing, and the proposed development of 50 units would contribute in reducing the shortfall. Added to this, a submitted unilateral planning obligation includes a provision for affordable housing. The Council also acknowledges that the proposal would provide employment during the construction stage, that the residents of 50 dwellings would contribute to the local economy, and that the scheme would help to achieve social cohesion with existing residential areas and allow integration with the existing local village community. All of the above weighs heavily in the scheme's favour. Nevertheless, I find the environmental harm I have identified would significantly and demonstrably outweigh those economic and social benefits, such that the balance lies against the scheme.
14. The proposed development would not accord with MDRLP Policies BE1 and CC6, the MLCA, or with emerging MDLP Policies S8 and D1. These say, in addition to that which I have alluded to in Paragraph 4 above, that proposals for development in the countryside will only be permitted provided that no harm is caused to the landscape character in the locality; that development must respond to the historic settlement pattern and scale, and uses appropriate materials and colours that are appropriate to local landscape character and well integrated into the landscape; and that the development is landscaped to protect local distinctiveness and is included as an integral part of the overall design.
15. The Council says the appeal site lies within a Special Landscape Area (SLA) on which MDRLP Policy CC7 applies. The Council has not explained why it continues to rely on the Policy given that preamble Paragraph 3.44 stipulates that SLAs will be superseded once landscape character assessments have been published. For that reason, I have afforded it little weight in my decision. I also find MDRLP Policy S2, insofar as it seeks to protect countryside for its own sake, is inconsistent with the Framework's approach and therefore I have also afforded it little weight in my decision.

Other Matters

16. The reason for refusal included the introduction of unwelcome domestic activity. However, the nature of a development of this type, as opposed to an isolated dwelling in the rural area, is that the character of the whole site would change from being rural, open countryside to being part of the built up area of Great Totham. This being the case, I do not find that any potential harm from domestic activity or residential paraphernalia can be distinguished from any more general harm that may be caused by the proposed development.
17. A number of concerns have been raised by local residents regarding capacity issues in relation to additional traffic, schools, shops and facilities and sewage drainage. The appellant's transport statement says the development could be accommodated without harm subject to works to widen a small section of Hall Road and provision of a footpath. The flood risk and fowl sewage and utilities reports both state the site is not at risk from flooding and that capacity exists at the nearby sewage treatment works. The reports persuade me that the proposed development could be accommodated without significant harm in these regards. The Council has not raised these as issues, and in the absence of evidence to the contrary, I have no reason to disagree. Whilst I have no evidence regarding the capacity of local schools, I am satisfied the financial contribution sought by the Council, agreed to by the appellant, would mitigate any demand from the proposed development.
18. Concerns have also been raised regarding the ecological value of the site and potential harm to biodiversity. The appellant's Extended Phase 1 Habitat Survey makes recommendations that additional surveys for badgers, dormice and bats would be required; and that vegetation clearance would need to take place at appropriate months of the year to avoid nesting birds. The surveys for reptiles and Great Crested Newts both propose mitigation including measures to retain the ponds on the adjacent land, to install reptile fencing, and install measures for trapping and translocation of species. In all cases, I see no reason why appropriately worded planning conditions would not have the desired effect of protecting the wildlife on the site in line with those recommendations.
19. I saw the site from No 51 Seagers. I noted the narrow depth of the garden and the views afforded from a rear bedroom window over the appeal site. Whilst the detailed layout is a reserved matter, I am however satisfied that sufficient distance would exist between this property and the proposed development such that there would be no significant harm to the living conditions of the occupiers. I also find sufficient distance would exist to other adjacent properties where again no significant harm to the living conditions of those occupiers would occur.
20. I have been provided with a unilateral planning obligation which would make financial contributions towards healthcare for £16,800; education for £12,352; and to provide up to 40% of the total units as affordable housing and to provide each property with a residential travel pack. The Council has not made detailed comments on the planning obligation but, assuming it meets the tests set out in paragraph 204 of the Framework, the health care and education contributions and the travel pack provisions would simply mitigate the effects of the scheme. Whilst the provision of affordable housing would be a positive benefit, I have found that, together with the other benefits identified, it would

nevertheless be significantly and demonstrably outweighed by the harm to the character and appearance of the area.

21. My attention has been drawn to the presence of a s.52 Agreement, dating from 1984, which placed a covenant on the land preventing its future development. This matter has caused some contention between the parties largely because appellants claim the Council only registered it as a local land charge in 2013. However this is not a matter before me, and I have not considered it any further in my decision.

Conclusion

22. For the reasons given above I conclude that the appeal should be dismissed.

R Allen

INSPECTOR

Richborough Estates