



Appeal Decision

Site visit made on 21 July 2015

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 12 August 2015

Appeal Ref: APP/X1545/W/15/3010113

Land rear of The Orchard, Maldon Road, Latchingdon, Chelmsford CM3 6LF

- 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 & Mrs Brett against the decision of Maldon District Council.
 - The application Ref OUT/MAL/14/00017, dated 9 January 2014, was refused by notice dated 8 October 2014.
 - The development proposed is the erection of 19 dwellings (13 Market Housing and 6 Affordable Housing Units) including details of means of access and layout with all other matters reserved.
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Decision

1. The appeal is dismissed.

Application for costs

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

Preliminary Matters

3. In the reasons for refusal, the Council cites policies in the emerging Maldon Pre-submission Local Development Plan (Local Development Plan). The Inspector conducting the Examination into that plan found all of the housing policies to be fundamentally unsound because the plan did not identify objectively assessed housing need. I do not accept the appellant's contention that because the Inspector found the housing policies to be fundamentally unsound, the plan as a whole is unsound. The Inspector was clear in stating that he did not have sufficient information to test the soundness of other policies in the plan and declined to continue with the Examination. At no point, therefore, did the Inspector find these other policies to be unsound.
4. The Council subsequently requested the Secretary of State to intervene and on 8 June 2015 the Secretary of State indicated that the Local Development Plan should be submitted to him for approval. I have not been advised of any further progress towards adoption of the Local Development Plan and therefore I must assume that no findings have been made in relation to the soundness of those policies at this time. The corollary is that these policies in the Local Development Plan have not been tested at Examination or approved by the Secretary of State. Accordingly, I attach very little weight to the policies in the Local Development Plan at this time and for that reason have not explicitly referred to them in my decision.

5. The Council concedes that it cannot demonstrate a five-year housing supply. Paragraph 49 of the National Planning Policy Framework (Framework) indicates that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. Paragraph 14 of the Framework indicates that where the development plan is absent, silent or relevant policies are 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 policies in the Framework taken as a whole. I have considered the main issues identified below on that basis.
6. The Council's first reason for refusal contends, amongst other things, that the proposed development would lead to the urbanisation of rural countryside within the designated Coastal Zone. However, the appeal site is not within the Coastal Zone, being located just outside of it. I have therefore had no regard to this designation or the attendant Policy CC11 of the Maldon District Replacement Local Plan (Local Plan) in reaching my decision.

Main Issues

7. The main issues are:
 - the effect of the proposed development on the character and appearance of the area
 - whether the proposed development would be likely to increase flooding in the area, and
 - whether the proposed development makes adequate provision for affordable housing.

Reasons

Character and appearance

8. The appeal site is located outside the settlement boundary of Latchingdon and therefore within the countryside. The settlement of Latchingdon has a distinctive linear form, with development generally following the major roads. This settlement does broaden out at the eastern end and I recognise there are some cul-de-sac type developments at this end of the village. These are the developments referred to by the Inspector in relation to a residential development at Bridgemans Green (APP/X1545/A/14/2222389) and I acknowledge that these form part of the character of Latchingdon. In doing so, I am however mindful that these developments are located at the opposite end of Latchingdon to the current appeal site and are within the settlement boundary.
9. At the western end of the settlement, approaching the appeal site, the linear form of development is very pronounced. Beyond the settlement boundary, this in turn leads to a ribbon of development on the west side of Maldon Road and, on Cold Morton Road, gives way to sporadic dwellings and other buildings fronting the highway. Consequently, whilst there are some examples of development extending back from the highway to the north of appeal site, the appeal site itself sits within a locality that is strongly characterised by linear development fronting the main roads.

10. The proposed development would essentially comprise a collection of detached and semi-detached houses in a circular arrangement surrounding a central open space, with access being obtained between an existing dwelling and a proposed replacement dwelling fronting onto Maldon Road. I acknowledge that this layout would have the advantage of retaining the large Oak trees in the centre of the site and that, in deference to the pattern of development in the area and location of the site, the density proposed is below that which would otherwise be achievable.
11. Nonetheless, the development would extend significantly back from the highway and thereby result in the loss of a considerable area of open land within the countryside. Views into the site are possible through gaps in the boundary planting along Cold Morton Road and, whilst the appeal proposal includes localised bolstering of this boundary planting, it would not be prudent to rely upon such planting to permanently screen views of the development. The proposed development would therefore be a visually intrusive development in the countryside, and would result in an urbanisation of the countryside.
12. I acknowledge that part of the appeal site is occupied as a vehicle repair garage involving a collection of outbuildings and the external storage of vehicles. The appellant contends that this is an established lawful use and, whilst the Council does not dispute this, I have not been provided with any evidence to show the extent of land involved. Nevertheless, the vehicle repair use is unsightly and I accept that the removal of this use would be a benefit arising from the appeal proposal.
13. The benefit in this respect must however be viewed in the context that this vehicle storage occupies only a small part of the site, the majority of which is open land and cannot be considered to be previously developed land as defined in Annex 2 of the Framework. Moreover, views of the vehicle storage are not extensive from outside of the site. I therefore attach only limited weight to the benefit arising from the loss of this activity. At the time of my site visit, some timber was being stored in the open part of the site and this was visible in views from outside the site. However, I have no evidence to show that this storage was taking place in accordance with a lawful planning use and accordingly have attached no weight to this.
14. Not only would the proposed development result in a visually intrusive urbanisation of the countryside, the form of development proposed would be entirely alien to and out of keeping with the strong prevailing linear character of development in the vicinity of the appeal site. The Council criticise this layout as being exclusionary and inward looking, and that it would be inaccessible to anyone other than residents who live there. This form of development is not uncommon in urban and suburban areas, and I do not consider that the inward looking layout is inherently unacceptable in those locations. However, potential acceptability in other locations does not automatically justify this form of development in the countryside, especially so considering that this layout would be entirely out of keeping with the linear development that defines the character of the closest settlement.
15. The appellant refers to a residential development allowed on appeal at Bridgemans Green in Lathingdon (APP/X1545/A/14/2222389) and seeks to draw comparisons with the appeal proposal. The site in that case directly adjoins the settlement boundary and is contained on three sides by the

- northern edge of the village. That site is also located towards the eastern end of the village, where there are examples of cul-de-sac type developments.
16. By contrast, the current appeal site is located close to, but is physically separated from, the settlement boundary and beyond the ribbon of buildings fronting Maldon Road is adjoined by countryside. It is also located outside the western end of the village, which is characterised by linear development fronting the main roads. The site at Bridgemans Green is therefore not directly comparable to the current appeal site, and the residential development allowed on appeal does not provide justification for the development now proposed.
 17. The appellant also refers to the residential development at Thatchers Croft, a development of eight houses outside of the settlement boundary to the north of the appeal site. I understand that this development dates from the 1980's and was therefore granted under a different policy regime. Furthermore, I have been provided with no details of the circumstances that led to planning permission being granted for that development. Consequently, I cannot discount the possibility that there may have been particular considerations that led to planning permission being granted in that case that may not necessarily apply to the current appeal site. The housing at Thatchers Croft is also an isolated and atypical example of a residential development extending back beyond the frontage of Maldon Road. For these reasons, I consider that Thatchers Close does not serve as a precedent for the current appeal proposal.
 18. I conclude that the proposed development would unacceptably harm the character and appearance of the area. I therefore conclude that the proposed development would be contrary to Policies BE1 and CC6 of the Local Plan. These policies require, amongst other things, that development proposals are compatible with their surroundings in terms of layout and visual impact and that, outside defined development boundaries, should make a positive contribution to the landscape and open countryside. The proposed development would also fail to accord with the importance attached to good design in the Framework.

Flooding

19. The Flood Risk Assessment (FRA) submitted by the appellant confirms that the majority of the appeal site is within an area having potential for groundwater flooding to occur at surface level. A number of representations received at both planning application and appeal stage refer to flooding in the vicinity of the site, and I have been provided with photographs showing flooding at various points around the appeal site, including at the junction of Maldon Road and Cold Norton Road. I was also specifically invited to view the culvert at Norwood Cottage which, whilst dry at the time of my visit, photographs show is prone to flooding. Having regard to all this information, I am in no doubt that flooding due to groundwater is a genuine concern.
20. The Environment Agency initially objected to the appeal proposal on the grounds that the FRA submitted with the application did not provide a suitable basis for assessing flood risk. It was on the basis of this response that the Council's objection to the proposal is founded. However, the appellant subsequently provided additional information to the Environment Agency and, by letter dated 20 October 2014, the Environment Agency withdrew their holding objection subject to the imposition of a condition requiring a surface water drainage scheme.

21. Had I been minded to allow this appeal, I am satisfied that the concerns expressed by local residents in relation to flooding could have been satisfactorily addressed by the imposition of the condition suggested by the Environment Agency. I therefore conclude that, on basis of the additional information provided to the Environment Agency, the appeal proposal would accord with Policies BE1 and CON5 of the Local Plan. These policies indicate, amongst other things, that all developments will be expected to minimise their impact on the environment by adopting environmental best practice. The proposed development would also comply with the Framework in terms of managing the residual risk of flooding.

Affordable housing

22. Policy H9 of the Local Plan requires the provision of up to 30% of dwellings in new developments to be affordable housing. The provision of affordable housing would also be consistent with the objective in the Framework of promoting sustainable, inclusive and mixed communities. The appellant has indicated an intention to provide the requisite number of affordable housing units and to that extent has submitted a signed draft legal agreement to provide six affordable houses as part of the proposed development.

23. However, at the time of writing this decision, the legal agreement had not been signed on behalf of Maldon District Council. Consequently, notwithstanding the clear intent of the appellant to provide the affordable housing sought by the Council, the legal agreement has no effect and could not be enforced. It follows that the requirement under Policy H9 of the Local Plan has not been discharged and the proposed development would be contrary to that policy. The appeal proposal would also fail to accord with the objective in the Framework in relation to promoting sustainable, inclusive and mixed communities.

Other Matters

24. The occupiers of "Ashwood House" on Maldon Road have expressed concerns in terms of the overlooking and overshadowing of their property. I was able to view the appeal site from that property as part of my site inspection and I am satisfied that the views are representative of those from other properties fronting onto Maldon Road. Although the proposed new dwellings would alter the outlook from these properties, by reason of the separation distance to the closest of the proposed new dwellings, I am satisfied that the appeal proposal would not result in an unacceptable loss of privacy to the occupiers of Ashwood House or neighbouring properties. Similarly, I am satisfied that this distance would ensure that there would be no overshadowing of these properties or their gardens.

25. A number of residents have also expressed concerns regarding highway and pedestrian safety, particularly given the proximity of the appeal site to the junction of Maldon Road and Cold Norton Road. The appellant has commissioned a Transport Statement, which concluded that the proposed development would not result in a material increase in traffic movements and that visibility onto Maldon Road would be improved as a result of modifications to the existing vehicular access. I am also mindful that the Highways Authority has not objected to the proposed development. I am therefore satisfied that the proposed development would be acceptable in terms of traffic generation, highway safety and pedestrian safety.

26. I note the comments made by some local residents in relation to wildlife on the site, including Badgers, Barn Owls and Bats. The appellant has submitted an Extended Phase 1 Survey and, whilst this identifies the potential for protected species to be present on the site, the Council's Countryside & Coast Officer does not object to the development. On the evidence available to me, I see no reason to take a different view.

Conclusion

27. In conducting the balancing exercise required under paragraph 14 of the Framework, it must be immediately recognised that the net provision of 18 dwellings would make a meaningful contribution towards meeting housing need in the District. Having regard to the objective in the Framework to significantly boost the supply of housing, this weighs in favour of the proposed development.
28. However, the contribution made by the appeal proposal towards meeting housing supply in the District must be looked at in the context of other considerations. The proposed development would result in a visually intrusive urbanisation of the countryside and in a form that would not keep with the linear form of development in the vicinity of the appeal site. The proposed development would therefore not constitute good design.
29. Paragraph 49 of the Framework re-iterates that housing application should be considered in the context of the presumption in favour of sustainable development. The Framework confirms that good design is a key aspect of sustainable development and it follows that the appeal proposal would not intrinsically be a sustainable form of development. This reduces the weight that I can attach to the provision of the additional dwellings proposed.
30. Notwithstanding the clear intention of the appellant to provide the affordable housing provided by Policy H9 of the Local Plan, I cannot ignore the fact that there is at present no legal agreement in place to secure the provision of those affordable units. This too reduces the weight that I can attach to the provision of the additional dwellings proposed.
31. I have regard to all other matters raised, including that the appeal proposal could provide an additional pedestrian access for public use from Cold Norton Road and that the existing dwelling to be demolished is showing signs of subsidence. Nonetheless, the magnitude of the harm that would be caused by the proposed development to the character and appearance of the area leads me to the conclusion that the adverse impacts resulting from the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in Framework taken as a whole.
32. Consequently, in accordance with paragraph 14 of the Framework, I conclude that this appeal should be dismissed.

Paul Freer

INSPECTOR