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## Appeal Decision

Site visit made on 14 September 2015

**by K R Saward Solicitor**

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

**Decision date: 1 October 2015**

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**Appeal Ref: APP/X1545/W/15/3065798**

**Land to the south of Chapel Road, Tolleshunt D'Arcy, Maldon CM9 8TL**

- 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 J&M Seabrook (Tollesbury) Ltd against the decision of Maldon District Council.
  - The application Ref OUT/MAL/14/00759, dated 4 July 2014, was refused by notice dated 4 December 2014.
  - The development proposed is outline planning application for residential development including 7 bungalows for older people for social rent purposes.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. With the written consent of the parties I have amended the description of the development which in the original application form refers to 6 instead of the 7 bungalows identified elsewhere in the application.
3. The application is made in outline with all matters reserved for future approval except for the layout. The layout plan No. 922/SK2 is annotated as 'illustrative only', but it has been confirmed by both parties that the plan forms part of the proposal and the annotation should be disregarded. For the avoidance of doubt I have considered the detail shown on the plan as included in the scheme before me and I have determined the appeal on that basis.
4. A completed unilateral undertaking (UU) made under Section 106 of the Town and Country Planning Act 1990 (as amended) was submitted by the appellant during the course of the appeal to commit the 7 bungalows as affordable rented homes. Following comments from the Council, the appellant submitted a further UU to seek to overcome its objections. I return to this matter below.
5. In July 2015 the Council published its 'Five-Year Housing Land Supply Statement 2014/15' (HLSS). The appellant was afforded opportunity to comment on the submitted material and I have taken those comments into account in my decision.

### Main Issues

6. The main issues are:-
  - the effect of the proposed development on the character and appearance of

the surrounding rural area; and

- if any such harm is identified, whether or not there are any other considerations, specifically any shortfall in housing land supply, that would justify bringing the development forward now.

## Reasons

7. The appeal site is a broadly rectangular shaped parcel of land forming one corner of a much larger agricultural field. It is located outside, but directly adjacent to the development boundary for the village of Tolleshunt D'Arcy as shown on the inset map within the Maldon District Replacement Local Plan (LP), 2005. It is therefore in the countryside for the purposes of local planning policy. It also lies within a Special Landscape Area and forms part of a Coastal Zone. The merits of those designations in terms of the appeal site are challenged by the appellant, but they nonetheless apply.
8. Tolleshunt D'Arcy is an attractive village with some charming cottages and older style properties and the occasional grand building along with some modern housing. Chapel Road comprises a mix of two storey properties ranging from traditional terraces and semi-detached houses to larger modern detached houses. The appeal site is at the end of a long row of housing beside No 1 Chapel Road where the housing stops abruptly providing a clearly defined boundary for the village settlement. Some housing continues on the opposite side of the road where there is also a group of farm buildings, but the pattern becomes sporadic.
9. Hedgerow lines part of the site's highway frontage. It is generally low and sparse allowing reasonably clear views into the site. The hedgerow becomes denser past the site and stretches into the distance. Along the rear boundary is a post and wire fence behind which there are paddocks belonging to Spring Farm and Cottage. The western boundary is shared with No 1 and the rear gardens of a row of dwellings behind it in D'Arcy Way. The eastern boundary is open and fields extend far into the distance.
10. The introduction of built form into this space would inevitably cause harm by palpably extending the village into the open countryside. This corner of the field does not in isolation possess high landscape value because of its size and position bounded on two sides by housing and the paddocks. However, its openness is a quality in itself and importantly it provides a clear and very definite division between development and countryside. It is also viewed in the context of being part of a considerably larger field which opens up into a wide expansive area of countryside. The field of which it forms part contributes heavily towards the rural characteristics of the area. Except for the odd distant building, the fields continue to the east as far as the eye can see creating a pleasing landscape and tranquil environment. The appeal site thus establishes a soft buffer which is pivotal in separating the hard edge of the village from the wider landscape beyond. By pushing that hard edge into the openness and up against countryside with high aesthetic value, appreciable harm would be caused to the character and appearance of the area.
11. The prevailing pattern of development is linear. To some extent the proposal would outwardly continue this theme by a row of three houses along the highway frontage. The main body of the appeal site would be laid out behind in a curved formation. A cul-de-sac layout is not unique to the area. For

example, there is a small modern cul-de-sac development in Chapel Road near to the junction with Station Road. The proposal differs from that scheme through the use of more sweeping lines and semi-circular pattern. Although this layout would not reflect the long straight lines of adjacent development, the less regimented approach would provide a slightly more sensitive transition to this edge of settlement location.

12. The layout plan identifies a series of linked bungalows to the rear of the site with two detached bungalows closest to the shared boundary with the row of existing dwellings. As lower level structures, the extent of harm to the character and appearance of the area would be mitigated to a certain degree although it would not be overcome altogether. Along the eastern boundary there would also be 3 and 4 bedroom houses. This boundary is particularly sensitive because of the open landscape that it abuts. A planted landscaped strip alongside this boundary would be established outside the appeal site, but on land within the appellant's control. This would soften the appearance, but it would not suffice to offset the significant harm arising from the prominence of large two storey structures jutting towards the landscape.
13. Several appeal decisions<sup>1</sup> have been brought to my attention by the Council where Inspectors have dismissed appeals where harm would arise to the character and appearance of the countryside in locations outside but abutting development boundaries. Most are for much larger schemes where the associated impacts could differ considerably and so they have little bearing in this case. One appeal, Ref APP/X1545/A/13/2195751 dated 15 October 2013 concerns an outline planning application for 5 dwellings in Tolleshunt D'Arcy. There appear to be some similarities, but no two sites will be the same and it carries limited weight in this appeal. Nevertheless, my findings are not inconsistent with any of these decisions.
14. In summary, whilst I find no material harm from the curved design of the proposed layout, the introduction of housing into this open space would demonstrably and irrevocably diminish the soft edge of the village exacerbated by 2 storey form built alongside the boundary with open countryside. It would be a significantly harmful encroachment into the countryside causing an unacceptably detrimental effect on the character and appearance of the surrounding rural area. This would be contrary to LP Policy BE1 which requires development proposals to be compatible with their surroundings including its relationship to important landscape and open spaces. It would further be contrary to the landscape protection aims of LP Policies CC6, CC7 and CC11. Conflict would also arise with the core principle in Paragraph 17 of the National Planning Policy Framework (the Framework) to recognise the intrinsic character and beauty of the countryside.

#### *Housing land supply*

15. At the time of the Council's decision, it was unable to demonstrate that it had a deliverable 5 year housing land supply as required by the Framework. Without a 5 year housing land supply the Council's policies, namely LP S1, S2 and H1, would as set out in Paragraph 49 of the Framework be considered out-of-date insofar as they restrict development outside the development boundary. The figures indicated that the Council could only demonstrate 1.8 years supply.

<sup>1</sup> Appeal refs: APP/X1545/A/14/2224678; APP/X1545/A/14/3004973; APP/X1545/W/14/3000595 & APP/X1545/A/13/2195751

Since then the Council says that it has actively encouraged sites to come forward for development which has resulted in a dramatic improvement in its position. Its updated HLSS concludes that the Council is now able to demonstrate a supply of specific deliverable sites sufficient to provide 7 years' worth of housing against its identified housing requirements. In that scenario, the location of the appeal site outside the development boundary would be contrary to the aforementioned development plan policies.

16. The appellant has disputed that conclusion and maintains the position is more like 3.2 years and possibly worse. In particular, the appellant challenges the inclusion within the Council's calculations of strategic housing allocations identified in its Submission Local Development Plan. Progress of this emerging plan has stalled with the timetable for its adoption apparently being uncertain. The appellant also contests the inclusion of two substantial schemes which await final determination. If the position is as inconclusive as the appellant suggests then the district's housing supply would not be as healthy as the Council asserts.
17. Ultimately, the information before me is insufficient to draw any firm conclusions regarding the supply of deliverable housing sites. Even if there is a 5 year supply, Paragraph 49 of the Framework is clear that housing applications should be considered in the context of the presumption in favour of sustainable development.
18. Paragraph 7 of the Framework recognises that there are three dimensions to sustainable development, namely economic, social and environmental. The construction of 22 dwellings would assist the local economy in terms of labour opportunities and demand for materials and services during construction. Once occupied it may be anticipated that future occupiers would also support local services providing ongoing economic benefits. Given the scale of the proposal this would be a moderate benefit.
19. The social dimension concerns providing the supply of housing required to meet the needs of present and future generations and accessible local services. Not only would 22 dwellings be delivered towards boosting housing supply, but 7 of those would be affordable homes. The appellant states that following discussion with the Council, the affordable homes would be older person bungalows having had regard to evidence of need within the Council's Strategic Housing Market Assessment. This is not disputed by the Council and I note that the Council's Housing Department fully supports the application. The delivery of such homes carries moderate weight.
20. The parties agree that the appeal site is within a sustainable location not far from the centre of the village where there are some services and facilities. These include a small shop with part-time post office, a pub, primary school and restaurant/takeaway. Bus services run to Tollesbury, Maldon and Colchester, but I have not been supplied with details of their frequency and the Council refers to the service as 'somewhat restricted'. I am mindful that the Framework recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. However, without further information, I have doubts whether the bus would be a viable option for journeys for work or to be sufficiently convenient to access a full range of services and facilities to avoid dependence on the private car.

21. From the evidence before me, I am not altogether convinced that this is a sustainable location although I recognise it has some credentials in its favour. Overall, I consider that there is a mixed response against the social dimension with possible reliance on the car also impacting negatively against the environmental dimension.
22. I have already found that there would be significant harm to the character and appearance of the surrounding rural area. In this way the proposal fails to fulfil the environmental role. It is a core planning principle that the intrinsic character and beauty of the countryside is recognised. Therefore, the harm identified weighs very heavily against the proposal.
23. It is clear from Paragraph 8 of the Framework that the three roles should not be undertaken in isolation, because they are mutually dependant. To achieve sustainable development economic, social and environmental gains should be sought jointly and simultaneously. Taking into account all three dimensions, I do not consider it overall to be sustainable development in view of the significant harm I have found in environmental terms to the character and appearance of the area. Given the extent of that harm my view would not be changed even if I could be fully satisfied regarding the sustainability of the location. No presumption in its favour of the development therefore arises.

#### **Other Matters**

24. The completed UU dated 11 September 2015 secures 7 bungalows as affordable homes in compliance with the requirement for 30% on-site affordable housing within LP Policy H9. The Council highlights that 40% affordable housing is set out within its emerging Local Plan but acknowledges that this cannot currently be justified. In stating that the earlier version of the UU was unsatisfactory, the Council only identified how references to "Persons in Housing Need" ought to read "Eligible Persons in Housing Need". Apart from this one word, which was inserted in the updated UU, no other concerns have been explicitly identified. In providing its standard template, the Council has not drawn my attention to any particular paragraphs and I am unable to deduce in what other ways it considers the UU to be unsatisfactory.
25. The UU provides for the tenure and type of affordable housing to be agreed through submission of a scheme prior to commencement of development. No more than 25% of the market dwellings could be occupied before the affordable housing was made available for occupation. These measures would ensure that the affordable housing was brought forward at an appropriate stage. The affordable housing is expressed to be for 'Older People' although no definition is included. This is a flaw, but one which I consider to be capable of rectification through details in the submitted scheme. Otherwise, I regard the UU to be in order. The affordable housing provision would be necessary, directly related to the development and fairly and reasonably related to it in scale and kind. Therefore, it would accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and Paragraph 204 of the Framework.

#### **Planning Balance and Conclusion**

26. The proposal would deliver 22 dwellings of which 7 would be affordable homes. However, following careful consideration of all matters raised in this case, the

benefits would not outweigh the significant harm and development plan policy conflict identified in relation to the character and appearance of the locality.

27. Accordingly, for the reasons given above and, having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*KR Seward*

INSPECTOR

Richborough Estates