

Appeal Decision

Site visit made on 10 September 2015

by D J Board BSc (Hons) MA MRTPI

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

Decision date: 23 December 2015

Appeal Ref: APP/X1545/W/15/3027426

Land to east of Burnham Road, Latchingdon

- 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 Ian Ferguson and Sons Ltd against the decision of Maldon District Council.
- The application Ref OUT/MAL/14/01227, dated 15 December 2014 was refused by notice dated 16 March 2015.
- The development proposed is outline planning application with all matters reserved for residential development.

Decision

1. The appeal is allowed and planning permission is granted for outline planning application with all matters reserved for residential development at Land to east of Burnham Road, Latchingdon in accordance with the terms of the application, Ref OUT/MAL/14/01227, dated 15 December 2014, subject to the conditions in Annex A.

Application for costs

2. An application for costs was made by Ian Ferguson and Sons Ltd against Maldon District Council. This application will be the subject of a separate Decision.

Procedural Matters

3. The application was submitted in outline, with all of the detailed matters reserved for future consideration. I have dealt with the appeal on this basis.
4. I have been referred to policies from the Maldon District Replacement Local Plan (LP) and emerging policies from the Submission Maldon District Local Development Plan (LDP). The latter has not been found sound. Therefore I am unable to accord significant weight to these policies.

Background and Main Issues

5. The application was refused for three reasons. Since then the appellant has submitted a Transport Statement. The Council has confirmed that this deals with the issues regarding highway safety. As such it will not be pursuing the second reason for refusal. Accordingly the main issues are:
 - the effect of the proposed development on the character and appearance of the area; and

- whether the development would make appropriate provision for infrastructure.

Reasons

Character and appearance

6. The appeal site is located adjacent to the settlement boundary for the village of Latchingdon. Therefore it is within the countryside for the purposes of the application of planning policy. My attention has been drawn to the area of land outlined in blue on the plans. This area has been granted outline planning permission for the erection of 10 dwellings¹. The site itself is a further part of the large field currently in arable cultivation.
7. To the immediate north of the site are the dwellings in Heritage Way. To the west is the development along Burnham Road. This includes a small development of new dwellings to the west on the opposite side of the road. To the south development is more sporadic on Burnham Road whilst to the east is open countryside.
8. The existing approval to the road frontage is described as continuing the existing line of housing and not representing a significant outward extension of development. The proposed development would be to the east of this. The limit of the eastern most boundary would be broadly consistent with the existing limits of Heritage Way. To the south the site width would be consistent with the existing dwelling Mulberry House. In this regard, whilst it would extend development deeper than just the road frontage, overall it would not represent a significant outward extension of development into the open countryside. The area has a residential feel and appearance and the development of this site would not appear out of place.
9. The proposal would be visible when approaching the village from the east along the B1018. Approaching from the north and west within the village it would come into view beyond the existing frontage dwellings on Burnham Road. I appreciate that this piece of land is on the edge of the settlement. However it would be seen against the backdrop of existing development on Heritage Way and Burnham Road. Overall the addition of dwellings in this location would not fundamentally alter the appreciation of Latchingdon as a settlement within the wider rural landscape.
10. Paragraph 7 of the National Planning Policy Framework (the Framework) indicates that there are three dimensions to sustainable development; economic, social and environmental. Concerning the economic role the provision of new dwellings would provide employment during construction. Future residents would also be likely to make use of the existing services in the village. There would be some economic benefits, albeit some would be temporary.
11. With regard to the social role the village does have some facilities. In particular my attention has been drawn to the local shops, school, public house, sports field and recreational facilities. The village also benefits from bus services with onward connections to larger settlements in the area. Walking and cycling would be possible to access services within the village.

¹ APP/X1545/A/14/2214527

12. Overall, in practical terms, in order to access a substantial range of facilities to undertake day to day activities and meet day to day needs, such as shopping and employment, the occupants of the new dwellings are likely to be reliant upon the private car for a large proportion of trips. However, Maldon is a rural district and in the context of the district as a whole Latchingdon does have some facilities. Further although it would be outside the defined settlement boundary the proposed development would be adjacent to the existing built up area of the village. As such it would be close to other housing and would not be an isolated development in the countryside. The site is as accessible to services as other dwellings in the settlement boundary. Therefore, whilst the location of the site is not a significant benefit in transport terms it is not wholly without advantages. I note that paragraph 35 of the Framework indicates that developments should be located to give priority to sustainable modes of transport. However, it also acknowledges that this should be considered taking into account other policies, particularly in rural areas.
13. The final dimension of sustainable development relates to its environmental role. I have considered the effect of the proposal on the character of the area and found that; overall, the provision of the dwellings would not have a harmful effect on the character and appearance of the area.
14. The Council have drawn my attention to an appeal decision² that concluded the Council did have a five year housing land supply. The appellants refer to two decisions³ that they consider demonstrate that allocations within the emerging Local Development Plan cannot be relied upon to deliver housing land supply. They also refer to the fact that the emerging policies rely on delivery of housing from 'other villages'. I note that there is disagreement between the parties as to whether or not the Council can identify a five year supply of housing land. I make no judgement either way. Nonetheless, in this case, I have found that the scheme would not harm the character and appearance of the area. I have borne in mind paragraphs 14 and 47-49 of the Framework and its guidance that planning should take account of different characters of different areas.
15. I therefore conclude that, whilst the development conflicts with an element of development plan policy, being development in the countryside. It would be consistent with the overall thrust of the Framework and would not harm the character and appearance of the area. In this regard it would not conflict with policies BE1 and CC6 of the Maldon Replacement Local Plan (LP) which amongst other things require new development to be compatible with their surroundings and not harm landscape character.

Infrastructure

16. The Council considers that financial contributions are required towards the provision of open space, school transport and early years and childcare. It also requires provision to be made for delivery of affordable housing on the site. There is no CIL in place. I have been provided with a signed and dated unilateral undertaking to secure 30% affordable housing and contributions for secondary school transport and early years and childcare. The Council has acknowledged that the appellant has provided an amended unilateral undertaking. Nevertheless, the Council remains opposed to the proposal.

² APP/X1545/W/15/3003795

³ APP/X1545/A/14/2224678 & APP/X1545/W/15/3004973

17. Paragraph 204 of the Framework sets out that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. This is in accordance with Regulation 122 of the Community Infrastructure Levy (CIL) Regulations.
18. The development plan policy H9 would require provision of 30% affordable housing on site. Emerging policy H1 of the Maldon Local Development Plan would require a provision of 40% in this area of the district. Paragraph 2 of the Framework reinforces that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. In this context I appreciate that the emerging policy is a material consideration.
19. The information from the Council's 'Strategic Housing Services' demonstrate that the appellant's proposal would meet the requirements of the adopted LP policy. However, it goes on to set out the requirements of the emerging policy. This is based on information from its Strategic Housing Market Assessment assuming a provision of 40% and providing a different breakdown of affordable housing. However, I have not been provided with detailed information that identifies clearly why there would be a need to apply the 40% requirement in this case. I understand that the Council consider that the area of land to the front of the site⁴ should be included in the consideration of the amount of affordable housing. However, I have not been directed to any relevant policy that would indicate that this land should be included in the consideration of affordable housing. Therefore, my considerations relate solely to the proposal before me and defined by the red line on the submitted location plan.
20. Overall, based on the information before me, I consider that application of LP policy H9 is appropriate in this case. The submitted obligation would require the submission of an 'affordable housing scheme' to the Council. As the application is made in outline this approach is proportionate. It would allow the detail of the mix of affordable housing to be determined in further detail at reserved matters stage.
21. LP policy REC3 (b) is relevant to the proposed development. The appellant identifies that the site is within the 400m distance of the existing facilities at King Georges Field. This is not disputed by the Council. The requirement of the adopted policy is that '*...enhancement of the play space is carried out in accordance with the needs generated by the proposed new development...*'. I have no evidence that the existing facilities are at capacity in terms of their use. Further I have no information that demonstrates that the proposal would create an additional demand specifically for those facilities or how, where and when any monies provided for enhancement would in fact be spent. In this regard, based on the information before me, I cannot conclude that this requirement is necessary or directly related to the development.
22. The requirements for education relate to school transport and Early Years and Childcare (EY&C). The Council is seeking contributions for both primary and secondary school transport provision. There is dispute between the Council and appellant regarding the need for a contribution toward primary school transport. The appellant has provided information that shows that the site

⁴ APP/X1545/A/14/2214527

would be about 0.62 miles from the existing primary school, which has available spaces. The Council has not disputed this. Based on this distance and my observations on site it is not unreasonable to suppose that residents of the new development would use the existing footpath along the B1018 to walk to the school. In this regard, based on the information before me, I cannot conclude that this requirement is necessary.

23. The appellant has included a contribution for transport to secondary school and EY&C within the submitted obligation. The information provided by Essex County Council (ECC) indicates that within the Althorn ward EY&C provision is already at capacity. Therefore the implication is that if the development went ahead then any need arising for it would put pressure on a service that is already at capacity. This would be a need directly related to the proposal. The application is made in outline and the Council suggest that without knowing the dwelling mix a precise contribution cannot be outlined although an indication is given. However, whilst the obligation defines this contribution specifically based on the illustrative information from ECC it also makes provision for this to be confirmed as correct and index linked if necessary. Further the provisions require it to be spent specifically on EY&C provision. In this regard, based on the information before me, I conclude that this requirement is necessary and it would be directly related to the development.
24. The secondary school contribution also requires confirmation in writing prior to development commencing. This would ensure that the amount is representative of the final mix and layout of dwellings. ECC has provided an indicative amount based on its formula. The 'Developers Guide to Infrastructure Contributions' is referred to. I have not been provided with a copy. Nevertheless it is identified that any pupils requiring secondary school places would travel outside of the village. As such the contribution would address a specific need arising from the development.
25. The Council have provided information regarding pooled contributions in the district⁵ since April 2010. In particular Appendix 2 of the submitted evidence⁶ indicates that the five obligation limit for pooled contributions has not been exceeded for EY&C provision, education, healthcare or public open space. Consequently, I have taken the obligation into account. I therefore conclude that the proposal would make appropriate provision for infrastructure. It would accord with the requirements of LP Policies H9, PU1, and REC3 and paragraph 204 of the Framework.

Other matters

26. I have carefully considered the comments from local residents. In particular concerns have been raised regarding highway safety and additional traffic and the cumulative impacts of this and other housing development in the locality. There is no substantive evidence to indicate that the development itself would lead to traffic problems or in combination with other dwellings. Therefore these considerations do not alter my conclusions on the main issue in the appeal.
27. A representation on behalf of 'Latchingdon South Limited' suggests that their site, opposite the appeal site, would be preferable. It is not for me to make a

⁵ & ⁶ Legal advice on Maldon District Council's arrangements for then delivery of infrastructure to support LDP Garden Suburbs and Strategic Allocations, dated July 2015

judgement about the suitability or otherwise of other sites. I have considered the appeal before me on its individual merits and relevant local and national planning policy.

Conditions

28. The Council has suggested a number of conditions which it considers would be appropriate were I minded to allow the appeal. I have considered these in the light of the Framework and Planning Practice Guidance and for clarity some of the Council's proposed wording is amended. Conditions are necessary that relate to the standard time limits and submission of reserved matters. A condition regarding the identification of the approved plans is required for the avoidance of doubt.
29. In the interests of the character and appearance of the area a condition requiring materials to be submitted is necessary and reasonable. Landscaping would be a reserved matter. As such a condition specifically requiring this would not be necessary at this stage. This should include details of any boundary treatment. The Council indicate that details of surface water disposal would be by required along with the details of ditch cultivation and flood mitigation. As these elements would be part of the overall scheme I have amended the Council's condition to require these details to be submitted concurrently with the reserved matters.
30. In the interests of the living conditions of existing residents it is reasonable and necessary to require submission of a construction method statement in this case.
31. The consultation response from the highway authority recommends conditions. In the interests of highway safety conditions requiring the layout of the access including details of any footway and pedestrian dropped kerb to be provided, the gradient, visibility splays, means of discharge of surface water, drainage and surface treatment of the access are necessary. The final matter in the highway authority conditions requires the developer to provide an information pack regarding sustainable transport, similar to a travel plan. I have not been provided with the policies that relate to the requirement or what the scheme would involve. Therefore I cannot be satisfied that it would be reasonable to impose it. In addition the requirements for parking provision and turning within the layout can be addressed through the reserved matter submission.

Conclusion

32. Overall, I do not consider that there are significant adverse impacts of granting planning permission. I consider that it would be a sustainable development. Consequently the benefits of the proposal outweigh the conflict with the policies of the LP. Therefore for the above reasons and having regard to all other matters raised I conclude that the appeal should be allowed.

D J Board

INSPECTOR

Annex A

- 1) Details of the appearance, landscaping, layout, access and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan.
- 5) Concurrently with the submission of the first reserved matter details of the measures to be taken for the disposal surface water shall be submitted to and approved in writing by the local planning authority. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority.
- 6) Concurrently with the submission of the first reserved matter details of the measures to be taken for the ditch cultivation and flood mitigation shall be submitted to and approved in writing by the local planning authority. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority.
- 7) No development shall take place until details of the construction of the access to the site, including levels, gradient, details of the means of discharge of surface water drainage onto the highway, details of the bridging or piping of the ditch/watercourse, details of the finished surfaces, details of the dropped kerb pedestrian crossing and details of the footway to be provided into the site have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) Notwithstanding the submitted access layout plan, details of the proposed access to the site, including the position of gates and the provision of a 2.4m by 70m visibility splay shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and the visibility splays shall be maintained free of any obstruction for as long as the development hereby permitted remains in existence.
- 9) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials

- iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities
 - vi) measures to control the emission of dust and dirt during construction
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works
- 10) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Richborough Estates