



Appeal Decision

Hearing held on 17 January 2023

Site visit made on 18 January 2023

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th February 2023

Appeal Ref: APP/X1545/W/22/3303195

Land off Maldon Road, Great Totham Essex

- 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 Gladman Developments Ltd against the decision of Maldon District Council.
 - The application Ref 21/01330/OUT, dated 20 December 2021, was refused by notice dated 30 June 2022.
 - The development proposed is the erection of up to 80 dwellings (including affordable housing) with public open space, landscaping, sustainable drainage systems (SuDS) with vehicular access point. All matters reserved except for access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application was submitted in outline, with all matters reserved for future consideration, apart from access. The submitted details in respect of the reserved matters have been supplied on an indicative basis only. I have therefore had regard to them on the same basis.
3. The planning application was refused by the Council for several reasons. One of these reasons pertained to the potential effect of the proposed development on ecology. As part of the appeal process, the appellant submitted additional information pertaining to this matter. The other parties have had the opportunity to consider this information. The Council confirmed, in advance of the hearing commencing, that this reason for refusal was withdrawn. I have no reason to disagree with the conclusion reached by the Council in this regard; and have therefore proceeded on this basis.

Main Issues

4. The main issues relevant to this appeal are:
 - the effect of the development upon the character and appearance of the surrounding area;
 - whether the proposed development could provide an appropriate housing mix; and
 - whether the effects of the development are such that a legal agreement to secure the provision of matters including affordable housing, highway

improvements, healthcare, public open space and mitigation for protected nature sites is required.

Reasons

Character and appearance

5. The appeal site consists of an undeveloped area outside of the settlement of Great Totham. Therefore, the appeal site appears to be in the countryside. The appeal site consists of a field. To the front of the appeal site is the B1022. The appeal site slopes upwards from the B1022. This gradient continues beyond the rear of the appeal site. The land to the front of the site, beyond the B1022, has a varied topography.
6. On one side of the site is a public house and a footpath running near to the appeal site's boundary. Beyond the path are several dwellings that make up the periphery of the village. Near to the opposite side of the appeal site, there are several trees around the Bull Brook. To the rear of the site are fields. In front of the site is the B1022 and beyond that, there is a cricket pitch and village hall. The wider area to the front of the appeal site features a varied topography.
7. The proposed development would result in an increase in the overall level of built form. Therefore, there would be an extension of the settlement into the countryside. In result, the proposed development would erode the generally verdant character of the vicinity. A notable feature of Great Totham is that the dwellings are close to roads. The indicative details submitted as part of the proposals show that the dwellings would be set back from the road. Therefore, the proposed development would conflict with the prevailing character.
8. The character of buildings outside of settlements in the surrounding area can be described as occurring on a relatively infrequent basis. These are surrounded by landscaping. The proposal would conflict with the character of the vicinity because, if constructed at a scale akin to the maximum number of proposed dwellings, there would be notably less open space on the appeal site. In reaching this view, I have had regard to the potential density of the proposed development.
9. This poses a concern given the general prominence of the appeal site. Although the development would be set back from the highway, it would be clearly visible from the B1022. In addition, the site's boundary treatment, in the form of hedges, would mean that the development would be readily perceptible. This means that any benefits arising from the existing planting would be limited.
10. Therefore, in consequence, the erosion of the verdant and open character of the site would be readily viewable. This is a particular issue given the fact that the appeal site is located near to the entrance to the village. Therefore, the loss of the field's character would be readily perceptible and the change from a rural landscape to a developed character would be significant.
11. The appeal site is opposite a village hall and a sports pitch. Whilst the users of these facilities are likely to be undertaking other activities, they would need to travel in the vicinity of the appeal site in entering or leaving these facilities. Therefore, the surrounding land uses increase the sensitivity of the appeal site to change.

12. The majority of people travelling past the appeal site are likely to be in vehicles and would view the appeal site for a relatively limited period. However, the B1022 is a relatively busy road. In result, the development has the potential to be experienced by a great number of people. In consequence, the adverse effects would be readily apparent.
13. To the side of the appeal site is a footpath, which also runs near to the dwellings that are constructed on the edge of Great Totham. From this path, it is currently possible to view the existing dwellings, in addition to the undeveloped nature of the appeal site. This means that the proposed development, and resultant increase in built form, would change the nature of this path to one of a more suburban character given that the buildings would be readily apparent.
14. I acknowledge that there is the potential for the appeal proposal to be designed in such a way so as to allow for gaps between the buildings to occur and views of the opposite side boundary of the appeal site to exist.
15. However, any such views would be against a backdrop of the proposed dwellings. In addition, there is a possibility that such views would also include items of infrastructure associated with a residential development. This might include access roads, parking and vehicle manoeuvring areas. In consequence, the proposed development would result in a more urban form that would significantly conflict with the existing rural character of this path.
16. The areas to the rear of the appeal site are on land higher than the appeal site. Although views from these areas are typically of a more panoramic nature, the insertion of an urban form into the countryside would be readily perceptible from these. This would amount to a significant amount of harm owing to the loss of the more rural character.
17. Although such views are likely to be of the roofs of dwellings, particularly, if those dwellings near to the rear of the appeal site are of a lower height, they would still result in a more urban character. This would significantly conflict with the existing rural landscape that features limited views of development.
18. From some vantage points in the wider area, the proposed development would be readily perceptible. This would mean that the proposed development would erode the generally rural aspect of these locations. This effect would be reduced due to the presence of planting and trees adjacent to the nearby Bull Brook. In result, the proposal would result in moderate harm to these locations.
19. The proposed development would be viewable from areas on the opposite side of the B1022. Within this context views of the proposed development would be diffused to some extent by distance, variations in landscaping and changes in topography. Therefore, the harm to the character and appearance of these areas would be limited. Nonetheless, the proposed development would give rise to a cumulative significant adverse effect upon the character and appearance of the surrounding area.
20. In reaching this view, I have given consideration as to whether additional landscaping could mitigate this effect. However, given the proportions of the appeal site, such landscaping would need to be of significant amounts in terms of height and coverage. This would mean that it would also erode the open

character of the appeal site and the surrounding area given that it would remove the variations that currently exist. Therefore, this suggestion would not overcome my previous concerns.

21. These adverse effects would also arise even though the proposed development would retain some existing landscaping and that the development would not breach any geographical features in the vicinity.
22. The proposed development would appear suburban, which would erode the existing rural character. Given the extent and number of locations where the development would be experienced, the level of harm that would emanate would be of the highest order. The proposed development, in this regard, would conflict with Policies S1, S8, D1 and H4 of the Maldon District Local Development Plan (2017) (the Local Plan), Policy GT02 of the Great Totham Neighbourhood Plan (2022) and the Maldon District Design Guide (2017). Amongst other matters these seek to ensure that developments conserve and enhance the natural environment; are within the defined settlement boundaries; protect the countryside's intrinsic character and beauty; contribute to, and enhance, local distinctiveness; enhance local context; have regard to the location and the setting of the site; and demonstrate a high-quality design.

Housing mix

23. The proposed development would comprise up to 80 dwellings. The planning application was submitted in outline form, with all matters reserved, apart from access. However, the planning application form specifies a particular housing mix. Of these, the application form suggests that the intended market tenure housing would be predominantly larger homes, with three or more bedrooms.
24. I understand that such a housing mixture would not be reflective of local needs. However, at the hearing, the appellant confirmed that the details contained on the application form were intended to be indicative only and would, potentially, be subject to change.
25. In addition, the housing mixture that is shown on the planning application form does not comprise part of the description of the proposed development. Therefore, should permission be granted, there would not be a commitment for the resultant development to be constructed in accordance with the indicative housing mixture.
26. Furthermore, if the appeal were to be successful, a Reserved Matters application would be required. Amongst other matters, this would confirm the amount of dwellings that would be constructed within the development and their sizes. Therefore, the Council would have sufficient opportunity to consider such details and ensure that the proposed development responds to local need. Such an assessment would include an appraisal against relevant development plan policies pertaining to such matters.
27. Although the degree of change from these indicative details may need to be relatively large, the information on the application form demonstrates a way in which the site could be developed. This does not mean that there are not alternatives, which might deliver a housing mix more akin to the local needs. Therefore, the housing mix as set out on the application form does not cause significant concern in respect of the ability of the development to respond to local need.

28. In addition, it would be possible to include a condition that would enable the Council to consider details of the housing mixture prior to the submission of the reserved matters. This would mean that the final scheme is appropriate. Such a condition would accord with the relevant statutory tests given that it would be necessary to ensure an appropriate housing mixture; would be related to planning given that there is a requirement in the Framework to provide a variety of house types; is related to the development proposed, is reasonable; precise; and enforceable.
29. At the hearing, the Council suggested that such a condition could be imposed in respect of the affordable housing. Although the degree of difference between local need and the indicative details might be smaller, this demonstrates that this approach can be effective.
30. I therefore conclude that the proposed development could provide an appropriate mixture of house types. The development, in this regard, would conform with the requirements of Policy H2 of the Local Plan. Amongst other matters, this seeks to ensure that developments provide a suitable mixture and range of housing.

Whether a legal agreement is needed

31. The proposed development comprises 80 dwellings and is sited outside of the settlement. There is also a likelihood that the proposed development would be occupied by families. The proposed development is also likely to include an area of open space adjacent to the front boundary of the appeal site.
32. By reason of the fact that the development is likely to include family accommodation, there would be a need to provide school places for the future occupiers of the development. In addition, the occupation of the development is likely to increase the need for healthcare facilities in the surrounding area.
33. Furthermore, the proposed development is likely to require the maintenance of the open space throughout the life of the development and also the provision of local road improvements. The submitted, completed, legal agreement provides a mechanism for the securing of this.
34. There is a requirement for the development to include an element of affordable housing. The evidence before me is indicative that the locally set standard is 40% of the total number of dwellings.
35. The appeal site is near to several protected nature conservation sites. The development, being a residential development, is likely to increase the demand for recreation within these areas. This has the potential to adversely affect the integrity of these areas. However, this could be mitigated through the payment of a financial contribution, in line with the advice of Natural England, to the Council to fund alternative areas of recreation.
36. At the hearing, the Council confirmed that there was an on-going programme of activities to ensure that mitigation is in place prior to the first occupation of the development. Therefore, it is likely that the adverse effects arising from the development could be satisfactorily overcome.
37. A completed Section 106 Agreement was submitted at the hearing. Therefore, had I been minded to allow the appeal, a robust mechanism would have

existed to secure that any adverse effects of the proposed development would be mitigated.

38. I therefore conclude that the effects of the development are such that a legal agreement would be required to mitigate the effects of the development. However, the submitted agreement provides such a mechanism. The development, in this regard, would comply with the requirements of Local Plan Policies D1, H1, I1, N1, N3, S1, and T2 of the Local Plan. Amongst other matters, these seek to ensure that developments contribute positively to public open spaces; provide affordable housing, where required; deliver the infrastructure associated with development proposals; manage green infrastructure; improve accessibility to open spaces; identify the capacity and constraints of local infrastructure and services; and improve accessibility to streets.

Other Matters

39. The submission of the appeal scheme followed the determination and dismissal at appeal of a previous scheme. Although the development before me has been amended since the consideration of the previous proposal, this does not overcome the harm as previously identified.
40. Although the appeal site is in an accessible location, this is only one of all the matters that must be assessed and therefore does not outweigh my findings in respect of the main issues.

Heritage Balance

41. The appeal site is near to two Grade II listed buildings in the form of a public house and former stable building. For the purposes of this appeal, the significance of these buildings is, in part, derived from the presence of less developed areas. These areas assist in giving the listed buildings a more rural character. Therefore, the setting of these buildings contribute to their significance.
42. The proposed development would erode this character by reason of the loss of the more open areas in the vicinity. However, this effect would be reduced by reason of the separation distances between the listed buildings and the likely location of the proposed development. Whilst this would serve to reduce the amount of harm, it would not completely overcome it.
43. The harm that would occur to the setting of the listed buildings would not be severe and therefore it would be 'less than substantial' within the meaning of the National Planning Policy Framework (the Framework). Paragraph 202 of the Framework requires such harm to be weighed against the public benefits of the proposal.
44. The proposal would result in an increase in the overall level of housing supply within a rural area. This is particularly notable given that the Council cannot currently demonstrate a five-year housing land supply. Therefore, the proposed development would offer some benefits in this regard, to which I attribute a significant amount of weight.
45. Therefore, whilst giving significant importance and weight to the special attention I must pay to the desirability of preserving or enhancing the listed buildings, I find that the harm that would arise from the proposal would be

outweighed by its public benefits. Accordingly, there would not be a conflict with Paragraph 200 of the Framework as harm to designated heritage assets would have clear and convincing justification.

Planning Balance

46. The Council cannot currently demonstrate a five-year housing land supply as required by the Framework. There is some debate between the Council and appellant regarding the precise level of the shortfall. However, the evidence before me, as indicated by the Council, it may be as low as 3.66 years. This is a notable shortfall.
47. In consequence, the provisions of Paragraph 11(dii) of the Framework apply. This states that planning permissions 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. This is referred to as the 'tilted balance'.
48. In this case, the proposed development includes up to 80 dwellings. I have no reason to believe that these cannot be delivered within a reasonable timeframe. In reaching this view, I have had regard to the evidence before me regarding the timescales that the appellant has followed in bringing forward other development sites. In addition, I am not aware of any impediment to bringing forward the appeal site for housing.
49. In consequence, the proposed development would make a sizeable contribution to addressing the established housing shortfall in the locality. This is a matter that can be ascribed a significant amount of weight. In particular, Paragraph 60 of the Framework is clear that there is an objective of significantly boosting the supply of homes.
50. In addition, there is a finalised legal agreement before me that would secure the provision of 40% of the completed dwellings for occupation on affordable tenures. The evidence before me indicates that there is a significant need for more affordable dwellings within the area under the jurisdiction of the Council, and also Great Totham.
51. There is some debate regarding the amount of weight that should be given to the level of affordable housing provision. The appellant has suggested that this should be given substantial weight, which would be greater than a significant amount of weight. The Council has suggested that this matter be given a limited amount of weight. However, although the affordable housing is in need in the surrounding area, the overall effect is tempered by reason of the scale of the proposed development. Therefore, I attribute the social benefits arising from the increased affordable housing supply a significant amount of weight.
52. The proposed development would also deliver some economic benefits. These would comprise the benefits arising from the construction process. In addition, some economic benefits would also be derived from the occupation of the development in the form of support of local businesses and facilities.
53. However, there is no evidence before me that indicates that local business and facilities are declining due to a lack of residents. Furthermore, these economic effects are unlikely to be particularly large due to the nature of the development. Furthermore, in some instances, they are also likely to be of a

time limited duration. Therefore, they can only be attributed a limited amount of weight.

54. The scheme includes some enhancements to the level of biodiversity. However, although the effect of this would be discernible, the overall percentage increase would not be high. In result, I give this matter a limited amount of weight.
55. Public open space and improved pedestrian footpaths and a crossing have been included in the development. However, given the position of the development, it is unlikely that these would be widely used by the occupiers of existing dwellings in the village. Therefore, they can be given a limited amount of weight.
56. The occupation of the dwellings is likely to generate some financial benefits, such as increased Council Tax revenue. However, such receipts would be utilised to finance the services required for future residents. In result, this is a matter that is a neutral matter in my considerations.
57. The proposed development would conflict with development plan policies that seek to ensure that proposed developments maintain the character and appearance of the surrounding area, in addition to maintaining the character of the countryside. In addition, the proposal would conflict with the development plan given that the scheme would be outside of a settlement boundary. These policies are consistent with the Framework. In particular, Paragraph 174 of the Framework requires that planning decisions recognise the intrinsic character and beauty of the countryside, which the appeal scheme would not do.
58. The appeal site, and the surrounding area, has a distinctive landscape character that would be eroded by the proposed development. Therefore, having regard to the extent and nature of the harmful impacts the proposal would have upon the character of the area, the conflict with development plan and national policy is a matter to which I afford a high level of weight.
59. In addition, I have concluded that the proposed development would have an adverse effect upon the setting of nearby Listed Buildings. Although this harm is outweighed by the public benefits, as previously identified, it is a matter that I must still give weight to in this planning balance.
60. Overall, the high level of harm to the character and appearance of the surrounding area, combined with the harm to the setting of the nearby Listed Buildings that would be generated by the proposal are such that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Accordingly, on this occasion other considerations do not indicate the decision should be taken otherwise than in accordance with the development plan.

Conclusion

61. The proposed development would have a significant adverse effect upon the character and appearance of the surrounding area. These matters would outweigh the fact that there could be an appropriate housing mixture and that mitigation can be secured through the completed legal agreement. The benefits arising from the development, such as the provision of additional housing, including the provision of dwellings on affordable tenures, are significantly and demonstrably outweighed by the adverse effects.

62. The scheme would therefore conflict with the development plan taken as a whole. There are no material considerations, including the National Planning Policy Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the preceding reasons, I conclude that the appeal should be dismissed

Benjamin Clarke

INSPECTOR

Richborough Estates

APPEARANCES

For the appellant:

Christian Hawley	of Counsel
John Mackenzie	Gladman Developments Ltd
Clive Self	CSA Environmental
Jamie Woollam	CSA Environmental

For the Local Planning Authority:

Devan Hearnah	Maldon District Council
Matthew Leigh	Maldon District Council

Interested Parties:

Christine Adams	Local resident
Kevin Bennett	Local resident
Rupert Marks	Local resident

Documents submitted at the hearing:

Completed, and signed, Section 106 Agreement
Copy of the previous appeal
Plan showing a suggested route for undertaking the site visit