



Appeal Decision

Site visit made on 5 June 2024

by **K Savage BA(Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 September 2024

Appeal Ref: APP/W1525/W/23/3325610

Land to South Side of Lodge Road, Woodham Ferrers, Essex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr V Millen (Millen Homes Ltd) against the decision of Chelmsford City Council.
 - The application reference is 22/01754/OUT.
 - The development proposed is 18 affordable dwellings with public children's play area and habitat creation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with the matters of access and layout to be considered at this stage. I have considered the appeal on this basis and regarded details on the plans relating to the reserved matters of appearance landscaping and scale as being for illustrative purposes only.
3. On 30 July 2024, the Government published a consultation on "Proposed reforms to the National Planning Policy Framework and other changes to the planning system" and the "National Planning Policy Framework: draft text for consultation", alongside a Written Ministerial Statement (WMS) entitled "Building the homes we need". I have had regard to these as material considerations, albeit noting the Framework text is in draft and subject to change, which limits the weight to be afforded to it at this stage.

Main Issues

4. The main issues are:
 - Whether the proposal represents a suitable location for housing, having regard to policies relating to development in Designated Rural Areas, in particular affordable housing;
 - The design of the proposal and its effect on the character and appearance of the area;
 - The effect of the proposal on designated heritage assets;
 - The effect of the proposal on trees;
 - The effect of the proposal on protected nature sites.

Reasons

Location for Development

5. The appeal relates to an undeveloped field to the southern side of Lodge Road, a lane leading from the main road through the settlement of Woodham Ferrers. The site lies next to, but outside of, the settlement boundary set out under the Chelmsford Local Plan (May 2020) (the CLP). It instead lies within a Designated Rural Area under the CLP. Policy S11 states that within rural areas, the intrinsic character and beauty of the rural area will be recognised, assessed and development will be permitted where it would not adversely impact on its identified character and beauty.
6. The proposal is for 18 affordable dwellings, to which Policy DM2 of the CLP relates. Given the site's location outside of a defined settlement, Part B relating to rural exception sites is applicable. It supports affordable housing on small sites within designated rural areas, which would not otherwise be released for housing, in order to meet local rural housing need, where four criteria are met. Policy DM8 subsequently supports new buildings in the rural area where they accord with Policy DM2.
7. The test under criterion B(i) of Policy DM2 is for the appellant to provide clear evidence of the need for the number and type of housing proposed within the parish. The supporting text at Paragraph 8.18 sets out that all rural affordable housing proposals are expected to be accompanied by a local housing need survey conducted at a Parish-wide level. The survey should provide information on the number of households that are currently and likely to be in housing need in the next five years, their incomes and the type of accommodation required to meet their housing need.
8. The Council's Planning Obligations SPD (January 2021) (the SPD) expands on the supporting text to Policy DM2, stating that surveys should identify types of local connection that households have with a parish to inform the proposed method for prioritising and allocating dwellings. It adds that the Council can provide information on the number of existing affordable homes and vacancies that have occurred in a parish, but that while this information can supplement a local housing needs survey, it would not substitute for it. Finally, the SPD sets out that applicants are expected to seek the advice of, and work in partnership with, Rural Housing Enablers and Parish Councils to identify the local housing need.
9. On the evidence before me, the appellant has not followed this guidance. No housing needs survey has been undertaken. Rather, the appellant has sought to extrapolate a figure for local need based on overall housing numbers and targets set out within the CLP, and having regard to the Neighbourhood Planning Toolkit¹. The appellant's figures also take in areas beyond the parish of Woodham Ferrers and Bicknacre and there has not been engagement with either a Rural Housing Enabler or the relevant parish council.
10. The appellant submits evidence showing a total of 1,133 households on the Council's housing register in 2022/23, of which some 31 were in the highest priority category. The evidence further points to 7 households with addresses in East Hanningfield, West Hanningfield, Bicknacre or Woodham Ferrers being

¹ Housing Needs Assessment at Neighbourhood Plan Level: A Toolkit for Neighbourhood Planners

in 'immediate' need. The appellant has derived an overall affordable housing need figure for the ward of 46 dwellings, based on the existing ratio of affordable housing to the overall housing stock and applying the same rate of growth as planned for overall housing over the plan period (+26%). The appellant points to this being a conservative estimate and that worsening affordability figures and the demographic profile in the district justify a higher figure.

11. However, the appellant's evidence does not set out the expected number of households that are currently and likely to be in housing need in the next five years, their incomes and the type of accommodation required to meet their housing need. Nor does it identify the types of local connections people may have with the parish. I do not agree with the concerns over the response rate to postal surveys or the length of time they may take, which are certainly not exercises which take 'years' to complete as suggested. Nor am I persuaded by the appellant's concerns over the information held, or not held, by the Council, as engagement with rural housing enablers and parish councils would be a useful source of primary data to support an application in conjunction with data available from the Council.
12. In the absence of such information, the appellant's figures do not reflect recorded local needs, but instead are an estimate derived from the borough-wide need. I recognise that other methodologies, such as those employed by the appellant, can produce useful evidence, but the fact that a general affordable housing need exists in a district does not necessarily translate to a local need in a given parish. Rural exception sites are, by their nature, exceptions to a general policy of restraint regarding development in the countryside, requiring robust justification. On the evidence before me, I do not find the appellant's figures robust enough in terms of identifying a specific local need. This conflicts with Policy DM2(B)(i).
13. The Council otherwise accepts that the proposal is adjacent to a defined settlement boundary and is accessible to local services and facilities, thus satisfying criterion B(ii). In terms of the other criteria, the appellant has provided a unilateral undertaking (UU) to secure delivery of affordable housing to address criterion B(iii). The Council does not raise objection to the specifics of the UU and I see no reason to differ. Criterion B(iv) requires that the site is not subject to any other overriding environmental or planning constraints. This is further addressed in respect of the other main issues below.
14. In reaching a view, I note that the appellant has stressed that no more suitable brownfield sites are available in the area, in response to the Council's indication that this should be considered to satisfy Policy DM2. The supporting text to the policy, at Paragraph 8.17, does set out that it should be demonstrated that there are no suitable and deliverable previously developed sites that could comply with the policy before consideration is given to the release of a greenfield site. However, the policy itself does not stipulate such a requirement. Nonetheless, the Council has not indicated any known sites to which the appellant has failed to have regard. As such, I am satisfied that this does not weigh against the appellant's case.
15. However, given the failure to provide clear evidence of a local need for affordable housing, the proposal would conflict with Policy DM2 of the CLP and so would not be supported as a rural exception site. There would be

consequent conflict with Policy DM8 and therefore the proposal would not constitute development supported in the Rural Area. Moreover, I am satisfied that this finding is not in conflict with the Framework's aim that authorities should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs, as Policy DM2 provides the circumstances to achieve this.

16. These specific considerations aside, the Council accepts that there is a pressing affordable housing need generally within the borough, described as 'chronic' in its 2022 Housing Strategy, with delivery of three bedroom dwellings averaging 51 units per year between 2018 and 2021, against a need for some 113 units. The appellant also points to the strategy acknowledging that supply is lower than anticipated when last assessed in 2015/16 and that supply is not keeping up with demand. In these circumstances, the provision of 18 affordable dwellings would form an important benefit of the scheme in that it would help to address the borough-wide need for affordable housing. I address this in the planning balance below.

Design, Character and Appearance

17. The site would be accessed from a new entrance on Lodge Road, with a main cul-de-sac terminating in a T-shaped turning head to the centre of the site. The dwellings are shown as nine semi-detached pairs arranged around the cul-de-sac, reached by way of three smaller, shared driveways composed of grass eco-grid surfacing. 34 parking spaces would be provided, variously to the front and rear of dwellings, some in a tandem arrangement.
18. The site at present is demonstrably natural in appearance, with mature vegetation to the perimeter, particularly along Lodge Road where the hedgerow and trees form a strong, continuous boundary. From the rear, the site forms part of the natural surroundings experienced by walkers on the public footpath, for whom there is already a sense of separation from the built form upon passing the site.
19. The proposal would introduce a dense, urban estate-type layout with dwellings having modest plots that would be uncharacteristic of the area, which is defined by linear patterns of development and dwellings with large, natural rear gardens connecting with the open countryside.
20. The proposal would also require the access to be made in the roadside boundary. The plans suggest existing boundary trees and hedges would be retained and/or reinforced, but the creation of an access, necessary visibility splays and a proposed pedestrian crossing would result in a wider and more urbanised layout to the highway that would conflict with the rural character of Lodge Road. It would also draw attention to the development and counteract the screening that may be provided by the roadside vegetation.
21. The Council is critical of the overly engineered design of the cul-de-sac and its prominence at the centre of the site. An element of functionality will exist where roads must be designed to meet relevant standards. As such, I do not find the cul-de-sac harmful in and of itself. However, the internal layout otherwise would see the dwellings arranged without any discernible pattern or order. Those to the front would ostensibly form a linear pattern but this would be punctuated by the area of public open space in front of a further pair of dwellings standing in a recessed position and perpendicular to the road,

- creating a fragmented road frontage that would fail to reflect or reinforce the linear pattern along the opposite side of Lodge Road.
22. Beyond this, the smaller shared driveways would extend awkwardly from various points on the turning head of the cul-de-sac. The one leading westward behind the front two pairs would create a poor environment dominated by parking, with poor natural surveillance due to the likely presence of tall boundary treatments to enclose the private rear gardens. A similar effect would ensue to the eastern side and both vistas would be terminated by parked cars.
23. The clustered parking to the corner of the turning head would add to the prominence of vehicular parking within the site. The rearmost driveway would feature a mix of side-by-side and tandem parking to dwellings that would create a cluttered appearance. Moreover, with the exception of the dwellings to the front of the site which would have separate pedestrian paths to their front doors, these driveways would form shared surfaces for pedestrians and vehicles alike. However, as laid out, they would favour vehicular use and would not be conducive to creating attractive, shared spaces for different users.
24. The Council further points out that the parking provision of 34 spaces is less than the required 41 spaces for the size of the development and necessary visitor parking. Contrary to the appellant, layout is a matter to be determined now, and I am not satisfied that an additional seven parking spaces could be accommodated without material changes to the layout of the scheme. Moreover, given my concerns with the parking as proposed, it is likely that broader changes would be required to the parking arrangement that would be beyond the scope of the remaining reserved matters or another condition.
25. The Council adds that the rearmost dwellings would be located some 40 metres from the turning head of the cul-de-sac, which would require either residents or refuse collection operatives to move bins distances well beyond the 20m guideline of Appendix B of the CLP. The appellant points to longer distances being specified by the Building Regulations – 30 metres for residents to move waste containers and the containers to be within 25 metres of the waste collection point specified by the local authority.
26. However, it is open to the local authority to implement its own standards for waste management, which are set out at Appendix B. The Council's position is refuse collection vehicles will not reverse more than 12 metres. This would leave the rearmost dwellings still beyond the 20 metre distance for occupants to move bins. Moreover, I am doubtful that, in practice, large refuse collection vehicles would reverse into the driveways, given their narrow width and shared usage with pedestrians, which would leave occupants with further to move bins. The alternative would be a potentially incongruous clustering of bins at the turning head on collection days that would pose a visual and environmental hazard. Thus, in the absence of clarity that the Council would in fact service all dwellings, I am not satisfied that the layout of the proposed development would provide for adequate waste management.
27. I acknowledge that scale, appearance and landscaping are reserved matters, and the dwellings could be designed to match in form and materials. However, their irregular alignments and orientations within the site, together with the prominence of car parking, would result in a development lacking visual harmony. It would form a conspicuous, urbanising development that would fail

to respect the prevailing characteristics of the existing built form or positively reference the surrounding rural character.

28. For these reasons, therefore, I conclude that the appeal scheme would fail to achieve a high standard of design, and would consequently cause significant harm to the character and appearance of the area. This conflicts with Policies S11, DM8, DM23 and DM24 of the CLP, which together require development of high quality design that responds positively to local character and recognises the intrinsic character and beauty of the Rural Area. There would also be conflict with the Framework which regards good design as a key aspect of sustainable development.

Heritage Assets

29. Dyer's Farmhouse is a Grade II listed building located to the south-east of the appeal site. Initially a 17th century timber-framed and plastered house, it has been extended and renovated over time and is now faced in roughcast render with modern additions including outbuildings and a swimming pool. It is also partially enclosed from the adjacent track/public footpath by a modern brick and rendered wall.
30. I am provided with limited evidence from the parties as to the heritage significance of the building. Its age and surviving form provides some historic and architectural interest as an example of the evolution of the settlement. Though no longer associated with a working farm and now part of linear development on Main Road, the Council points to the undeveloped land to the west of the site, including the appeal site, as forming an important part of the setting of the listed building, insofar as it would have once formed part of the land worked from the farmhouse.
31. The appellant points to the farmhouse being much altered and to there being no known link between the farmhouse and the land to the west. The proposed development would have no effect on the listed building itself, but it is reasonable to consider that the appeal site, given its proximity to the listed building, would have formed part of its historic, rural setting, even if not formerly part of the actual holding.
32. This land to the west, including the appeal site, retains a strong rural quality, with an absence of visible development when walking along the track past the listed building and towards the appeal site. A physical and visual connection to the wider rural hinterland is therefore maintained, which reflects the origins of the listed building and thus still makes a positive contribution to its setting.
33. The proposed dwellings would represent a substantial expanse of development on the southern side of Lodge Road which is presently limited to two individual properties. As scale is a reserved matter, the overall height and massing of dwellings is not yet established. Therefore, whilst I recognise that existing hedgerows would provide some screening of the development, I cannot rule out that the development would form a visible presence within the setting of the listed building. The introduction of housing would erode the natural appearance and agricultural character within this area. This would cause harm to the setting of the listed building, and in turn its heritage significance.

Trees

34. The Council points to the site containing a number of mature trees contributing positively as natural landscape features, which Policy DM17 of the CLP seeks to protect where they are important to the character and appearance of the area, unless a landscape strategy compensates for the loss or there are overriding public benefits arising from the development.
35. The application is not supported by an arboricultural survey. The most prominent trees are located along the boundary with Lodge Road, with a further cluster towards the rear corner. The site layout plan, which is for consideration in respect of the access point, internal roads and positions of dwellings, shows many of this rear cluster being removed, alongside one tree to the roadside boundary to accommodate the access. The two largest trees, remarked on specifically by the Council, are not indicated to be removed. The access is shown particularly close to one of these trees, but I have no information as to the potential impact of this on its roots.
36. However, landscaping is a reserved matter and thus the exact extent of tree loss and replacement is not established at this stage. The submitted site layout plan indicates the vast majority of planting on the roadside boundary would be retained and that there would be space within the site for new planting to replace that lost. Matters relating to groundworks techniques to protect existing trees could be controlled via planning condition.
37. Therefore, I am satisfied that the proposal would be capable of compensating for any loss of trees forming important natural landscape features, and so would accord with the requirements of Policy DM17.

Protected Nature Sites

38. The site lies within the 'zone of influence' of the Blackwater and the Crouch & Roach Estuary Special Protection Areas (SPAs) and RAMSAR sites. I have limited information before me in respect of these designations, but I understand from other appeals I have dealt with in the area that these sites are designated as important estuarine habitats hosting a wide range of important and scarce flora and fauna.
39. These sites are identified as being vulnerable to harm through recreational disturbance, which would be exacerbated by an increase in the local population resulting from new residential development. Additional residents from the proposal could cause an adverse effect on the integrity of the site. Therefore, alone and in combination with other development, the proposal constitutes a likely significant effect to the protected site.
40. As the competent authority in this case, I am required to carry out an appropriate assessment in relation to the effect of granting permission on the integrity of the protected sites. Mitigation has been developed to avoid such adverse effects in the form of the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS), which is funded through developer contributions.
41. The appellant has provided a completed unilateral undertaking (UU) which commits to paying a contribution towards the RAMS. The UU provides for a contribution at a rate of £156.76 per dwelling, which accords with the Council's stated tariff for the current year. Whilst a UU does not bind the Council to

spend the monies received in a specific manner, the RAMS is a well-established mitigation strategy, endorsed by Natural England and adopted by several local authorities working in partnership and with legal mechanisms in place. In light of this, I have no reasons to doubt that the Council, as a responsible public body, would not direct the money in the way it is intended.

42. In carrying out the appropriate assessment, therefore, I find that the adverse effects of the proposal on the integrity of the protected sites would be avoided. Consequently, the proposal would not adversely affect the integrity of the protected sites, either alone or in combination with other development.

Other Material Considerations

Habitat/Open Space Creation

43. An area of land immediately to the south of the appeal site is included within the blue line indicating it is under the control of the appellant. The appellant points out that this space is referred to in the description of the development as 'habitat creation' and it is described as 'an enhanced, biodiverse, area of open space adjacent to the proposed dwellings.' The space is also referred to as a Suitable Alternative Natural Green Space (SANG).
44. However, SANG is a tool used primarily to offset visitor numbers to SPAs and thus mitigate for potential harm to their integrity. This offer of the space appears to be separate to the RAMS mitigation discussed above and there is no indication that this is intended as mitigation for effects on a specific SPA. Moreover, there is no detail as to how this space would be secured for public use, what features it would provide or what level of biodiversity net gain, if any, it would deliver. Importantly, there are no details as to how the space would be maintained as there is no reference to it within the submitted UU, which only refers to 'open space' in terms of that to be provided on the site itself, i.e. the area within the red line on the accompanying plan.
45. These factors aside, I saw the space to be an open, mown area of grass. Whilst I do not doubt it could form a pleasant space for relaxation, games and other communal activities, there are already playing fields to the opposite side of Lodge Road which have the benefit of car parking and also playground equipment. Given the small size of Woodham Ferrers, I am not persuaded that a further area of public open space, smaller in size and located well off the highway, would provide any more than a very limited additional benefit to residents. The fact that this space is excluded from the area of the appeal site and there is no mechanism before me to secure its delivery and maintenance, further limits the weight I afford to it as a material consideration.

Other Matters Raised

46. Reference is made to the planning application for six dwellings on the opposite side of Lodge Road.² Despite its proximity to the appeal site, this proposal differed in a number of respects, including that the site was regarded as previously developed land, the dwellings continued the established linear pattern of development to this side, the proposals were specifically for over-55s occupancy and the application was considered under the previous development plan. As such, I do not find this scheme to be directly analogous to the proposal before me, which I have considered on its own merits.

² 19/01800/FUL

- 47. Concerns over the appearance of the access aside, no objections have been raised from a highway safety standpoint to the proposed access. From my observations, Lodge Road is not heavily trafficked or parked, and sufficient visibility could be achieved in both directions.
- 48. The Council has not raised concerns in respect of potential effects on protected species, having regard to the preliminary ecological appraisal.
- 49. Some local concern is raised in respect of flood risk and drainage. The Council has not identified harm in this respect. The site is located in Flood Zone 1, which is at the lowest risk of flooding, and the appellant's flood risk assessment has not identified any specific risks from a particular source. Were permission to be granted, conditions could be attached to ensure drainage is suitably addressed so as not to lead to problems on the site or for neighbouring properties.

Planning Balance

- 50. On the main issues of the appeal I have found that the proposal would conflict with the spatial strategy of the development plan, which includes safeguarding the countryside. The proposal would also cause harm to the character and appearance of the area and less than substantial harm to the significance of a listed building, through harm to its setting. Other matters where no harm has been identified are neutral factors weighing neither for nor against the scheme.
- 51. Policy DM13 of the CLP requires the impact of any development proposal on the significance of a designated heritage asset or its setting, and the level of any harm, to be considered against any public benefits arising from the proposed development. This reflects the approach of the Framework. I find that the harm in this case would be towards the lower end of less than substantial harm. However, this is still harm to which great weight should be afforded, in line with the Framework.
- 52. The proposal would deliver 18 affordable housing units which would go some way to addressing an acknowledged pressing need for affordable housing generally within the Council's administrative area and would align with the wider Framework aim of boosting the supply of housing nationally, an aim given further impetus in the recent WMS. This attracts significant weight in favour of the proposal in the circumstances.
- 53. There would also be economic benefits from the construction of the development and from engagement by future residents in the local economy. However, in view of the scale of the proposal, these are benefits of limited weight. As set out above, argued benefits of additional open space, biodiversity net gain and habitat creation have not been supported by sufficient detail to be confident of their delivery, and therefore attract limited weight.
- 54. These identified benefits, taken cumulatively, would not outweigh the less than substantial harm to the significance of the designated heritage asset, to which the Framework directs I must give great weight. Therefore, the proposal would conflict with Policy DM13 of the CLP, and guidance in the Framework for conserving and enhancing the historic environment. Consequently, the Framework indicates that this provides a clear reason for refusing the proposal.
- 55. In the overall planning balance, I am mindful that the provision of affordable housing to the edges of smaller settlements is one means of delivering

affordable housing. However it is contingent on meeting a number of factors which have not been demonstrated, including having an acceptable effect on the character and appearance of the area and on the significance of designated heritage assets. The benefits of the proposal, most notably in delivering affordable housing to meet an identified need within the district, are not sufficient to outweigh the totality of harm identified in the overall development plan conflict. Therefore, material considerations in this case, including the Framework, do not justify a decision other than in accordance with the development plan.

Conclusion

56. For the reasons set out, I conclude that the appeal should be dismissed.

K Savage

INSPECTOR

Richborough