

Appeal Decision

Hearing held on 17 September 2024

Site visit made on 17 September 2024

by N Praise BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th of October 2024

Appeal Ref: APP/X1545/W/24/3345671

Land adjacent to 17 Head Street, Goldhanger, Essex CM9 8AY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Landvest Development Ltd against the decision of Maldon District Council.
 - The application Ref is FULM/MAL/23/00830.
 - The development proposed is described as the construction of new dwellings together with new vehicular and pedestrian accesses from Head Street, car parking, garden space and associated development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On the 30 July 2024 the Deputy Prime Minister and Secretary of State for Housing, Communities, and Local Government issued a Written Ministerial Statement "Building the homes we need" regarding changes to the planning system, and consultation was started on "Proposed reforms to the National Planning Policy Framework ("the Framework")¹ and other changes to the planning system". The main parties have had the opportunity to make submissions regarding both documents in the context of the development proposal, and these have been considered in my determination of the appeal.
3. There are some references to the emerging Local Plan within the submitted evidence. However, the reasons for refusal do not identify any conflict with the emerging Local Plan and the main parties agreed, at the Hearing, that it remains at an early stage of preparation. I have therefore afforded it limited weight when considering this appeal.
4. A planning agreement dated 13 September 2024 was submitted prior to the Hearing which provides for affordable housing, and financial contributions towards the Essex Coast Recreational Disturbance Avoidance & Mitigation Strategy, healthcare, libraries, Early Years & Childcare, and education. At the Hearing, the Council confirmed the planning agreement was acceptable and no longer wished to contest the 2nd, 3rd or 4th reasons for refusal.

¹ This consultation closed after the Hearing on the 24 September 2024.

5. While members of Goldhanger Parish Council attended and spoke at the Hearing, any reference to the 'Council' in my decision refers to Maldon District Council unless expressed otherwise.

Main Issue

6. The main issue is whether the site represents an appropriate location for the proposed dwellings, having regard to access to services and facilities.

Reasons

7. Policy S1 of the Maldon District Local Development Plan 2014-2029 (2017) ("The Local Plan") supports growth in sustainable locations. It seeks to minimise the need to travel and where travel is necessary, prioritise sustainable modes of transport.
8. Policy S2 of the Local Plan identifies the strategic locations for growth. In rural villages, the policy states that this is related to the settlement hierarchy, to reflect their size, function, physical capacity, and to not result in unsustainable spatial patterns to the detriment of the wider area.
9. The appeal site lies in the countryside but is adjacent to the settlement boundary of Goldhanger. Policy S8 of the Local Plan categorises Goldhanger as a 'Smaller Village' and paragraph 2.102 of the Local Plan describes Smaller Villages as defined settlements containing few or no services and facilities, with limited or no access to public transport, very limited or no employment opportunities.
10. While the emerging Local Plan review suggests the village is medium in size, services and facilities are nonetheless limited in the village of Goldhanger. This was acknowledged at the Hearing by both main parties given the village is served by one church, one village hall, nursery / pre-school and two public houses². Goldhanger is also served by allotments, a playground, and public rights of way ("PROW") which can be accessed for recreation.
11. Services and facilities outside Goldhanger such as schools, medical, shopping, wider employment, and leisure amongst other things, would be located up to nine kilometres away, however, the majority would be broadly closer at approximately four or five kilometres away³. Bus stops are located opposite the appeal site on Head Street. The 95 bus service (and 95A school service) operate Monday to Friday, six times a day between 07:35 and 17:23. On Saturdays the service is reduced to four times a day, between 09:00 and 17:05. Some of these services, both during the week and on Saturdays, are two hours apart and some three hours apart. There are also no services into the evenings or on Sundays.
12. Options for cycling would principally take cyclists along the B1026. This road has considerable sections without streetlighting and operates under a 60mph speed limit with no pavement. While a snapshot in time, during my site visit I noted the road was well trafficked with farm vehicles and goods traffic commensurate with existing uses in the area and its classification as a 'B' road.

² Although one public house was vacant and not trading at the time of the Hearing.

³ Figure 5 of the RGP Highway Appeal Statement.

13. Opportunities for cycling and public transport do exist and I appreciate that sustainable transport solutions will vary between urban and rural areas. I also accept that opportunities to work from home have increased and a modest percentage of existing residents in rural areas do not have access to private vehicles and rely on alternative modes of travel. However, while bus services are reasonably quick, once aboard, and footway links to the bus stop would be improved, the bus services are limited to six services a day on weekdays, four at weekends and no services on Sundays. There are considerable waiting times between some services and the absence of any evening and Sunday services weighs against this mode of transport as a realistic and attractive alternative to private vehicles.
14. Options for cycling may be accessed by some cyclists, however, the conditions as set out above which include appreciable sections of a 'B' classification unlit road, without pavements, and vehicles traveling up to 60mph would suppress the attractiveness of this mode of transport particularly for families with children.
15. To access the National Cycle Network ("NCN") would still require cycling a considerable distance along the B1026 before cyclists could join the NCN. Given the remoteness of the appeal site it would be unwise to rely on future occupants having the high levels of confidence, fitness and proficiency needed to regularly cycle as an alternative to private motorised transport. While PROWs may be used for recreational walking and cycling, it has not been robustly shown how they offer appropriate direct access to either public transport or services and facilities.
16. I acknowledge that existing housing is already established in Goldhanger, however, when drawing all the considerations together, as a matter of fact and degree, I find that the proposed development would be remote and disconnected from local services and facilities. It would not minimise the need to travel or offer genuine choice in transport modes within a rural area.
17. In coming to my finding on this issue I have considered the other developments as set out in Figure 8 of the RGP Highway Appeal Statement below:
18. The Golf Driving Range scheme was a member overturn, and the Committee Minutes indicate that members found the benefits outweighed the harm in the balance. These reasons included an element of previously developed land at the golf range and proposed biodiversity net gains. The committee is entitled to balance the benefits and harms, and this may be contrary to its own officers. I will also consider and balance the benefits of this appeal scheme later in this decision.
19. I also note that the Committee indicated the golf range was in a sustainable location. The golf range is sited elsewhere away from Goldhanger and it is not clearly shown, in the evidence before me, how the Committee found the Golf Driving Range to be in a sustainable location. As I have set out earlier in this decision, each case must be considered on its individual merits including the attractiveness and genuine choice in transport modes to access a range of services and facilities. It is therefore difficult to consider if this site, at the Golf Driving Range, is directly comparable to the appeal proposal before me. I have therefore considered the current appeal on its own merits.

20. Slate Hall Cottage was also a member overturn. The Committee minutes indicate that the benefits of removing an unsafe structure and replacing it with safer structures as well as links to the National Coastal Path and the construction of efficient buildings outweighed identified harm. The benefits as part of the Slate Hall Cottage scheme are different to the appeal before me. I will balance the relevant benefits of the current appeal later in this appeal decision.
21. Land At Homelands was also a member overturn. In this case the minutes state that the Committee found the site to be accessible by public transport, but no further details are given. This site is located elsewhere away from Goldhanger and like the Golf Driving Range, I do not have details of the attractiveness of transport options or the degree of choice. I have therefore considered the current appeal on its own merits.
22. Other appeal decisions were also provided by the appellant in evidence⁴ and I have taken these into account. However, they are over 8 years old and were considered under a different Local Plan. The Council has also provided a more recent decision from last year⁵. All these decisions demonstrate differing findings on the location of Goldhanger over time. As set out above, I have considered the proposal against the existing policy landscape and its own individual merits.
23. In conclusion, the proposed development would not represent an appropriate location for the proposed dwellings, having regard to access to services and facilities. It would therefore fail to accord with the relevant provisions of Policies S1, S2, S8, D1, H4 and T2 of the Local Plan and the Framework all of which, amongst other things, seek to create sustainable spatial patterns of development.

Other Considerations

24. From the evidence before me, the Council can demonstrate a five-year supply of deliverable housing sites and therefore paragraph 11d of the Framework would not be automatically engaged. However, it is stated, by the appellant, that the most important policies for determining this appeal should be considered out-of-date for the purposes of paragraph 11d.
25. The Framework confirms that policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework. In other words, policies should not be treated as out of date simply because of their age but rather in what way, and to what extent, the policies are consistent with the Framework. The most important policies for determining this appeal would be Policies S1, S2, S8, D1, H4 and T2 of the Local Plan.
26. While the Local Plan does not have explicitly labelled strategic policies to address priorities for the development and use of land in its area, most strategic growth is identified through sustainable extensions to Maldon, Heybridge, and Burnham-on-Crouch in the form of Garden Suburbs and Strategic Allocations. In addition, development is not limited to these sites

⁴ APP/X1545/A/14/2213722 and APP/X1545/A/14/2222965.

⁵ APP/X1545/W/22/3309957.

only and the policies in the Local Plan direct housing to the most accessible locations, minimising the need to travel. On this basis the strategic priorities of the area are identified in the Local Plan.

27. The Local Plan seeks to direct development generally towards sustainable locations with provision of services and facilities in accordance with its settlement hierarchy. The Local Plan does not rule out new development in villages provided it does not result in unsustainable spatial patterns to the detriment of the wider area. This reflects the thrust of the Framework insofar as it advises that patterns of growth should be managed in support of objectives which include identifying and pursuing opportunities to promote walking, cycling and public transport use; and that significant development should be focussed on locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes.
28. It is stated that policies are ambiguous with duplication of detail and some of the evidence underpinning these policies is out of date. However, the Council currently can demonstrate a 5-year housing land supply and work on a new local plan is underway where current policies would clearly be reviewed as part of that process.
29. I appreciate the current plan period runs to 2029, however, the Council has calculated its supply of specific deliverable sites sufficient to provide a minimum of five years worth of housing in accordance with the Framework using the Standard Method. There is limited documented evidence before me to show that the Council has significantly under delivered on housing over the previous three years. Should the Council be unable to meet its housing requirements in the future, there would be policy implications at that time.
30. I also acknowledge there is a legal requirement for all local plans to be reviewed to assess whether they need updating at least once every five years. However, there is nothing to suggest that the failure to do so would result in policies being automatically considered out of date. Furthermore, if a council decides to review its plan, this in isolation does not automatically render policies as out-of-date.
31. I have considered the report of the Director of Strategy, Performance and Governance which was presented to an Extraordinary Council Meeting⁶ and I have also considered the evidence before me, as part of this appeal. The policies of the Local Plan set out an overall strategy for the pattern, scale, and design quality of places. The Council can also demonstrate a five-year deliverable land supply of housing against its housing requirements. Taken as a whole, and as a matter of planning judgement, the policies of the Local Plan that are the most important policies for determining this appeal are not considered to be inconsistent with the Framework to a degree which would render them out of date.

⁶ Appendix 2 of the appellant's statement.

Planning Balance

32. In the section that follows, I have adopted the following ascending scale in terms of weighting – very limited, limited, moderate, significant, substantial, very substantial.

Housing – Market and Affordable

33. The proposed development would optimise the use of land contributing twenty-five dwellings to the Council's general housing supply. These dwellings would also be mixed in size and type to meet local need, and they could be built out quickly. The proposed housing would also encourage churn of existing housing stock and reduce the cost of market housing relative to earnings through supply. While the Council can demonstrate a five-year deliverable land supply of housing, this is a minimum annual housing need figure and is not a cap on development.
34. 40% (10 No.) of the proposed homes would be affordable and evidence was also submitted to show there is an acute and pressing need for affordable housing within the district with limited prospect of this need being met. The Council did not challenge this evidence. I also acknowledge the importance of affordable housing to deliver social inclusion and equitable access to housing.
35. The quantum of development would make a moderate contribution to housing stock and affordable housing need. The weight attributable to housing more generally is moderated by the apparent supply of housing locally. However, it is accepted that the need for affordable housing is acute and pressing. The affordable housing quantum would be modest, but nonetheless an important public benefit of the proposal. The provision of market and affordable housing together, therefore, attracts significant weight in favour of the scheme.

Environmental

36. Ecological enhancements, landscaping and some energy efficiencies are proposed. However, considering the emphasis of the Framework on conserving and enhancing the natural environment, using natural resources prudently, minimising waste and pollution, and moving to a low carbon economy, it is not unusual for development to incorporate such enhancements. For these reasons, I give limited weight to these benefits.

Economic

37. The appeal site would generate economic benefits from the construction phase albeit these would be modest given the scale of the development and the temporary nature of the construction phase. There would also be economic benefits from the future occupiers of the proposed dwellings which would support the vitality of existing facilities in the village. Notwithstanding the limited choice in transport, future occupiers would also access facilities beyond Goldhanger. I place moderate weight on these economic benefits.

Other Benefits

38. I do not attribute weight in favour of the aspects of the scheme which would be policy requirements of the development, such as mitigation toward the integrity of protected sites or financial contributions towards education, Early

Years & Childcare, libraries, health, and transport. These aspects have potential to offset the impacts of the proposed development but would not provide material public benefits.

39. I appreciate the appellant actively engaged with the Council to collaboratively work on the development proposal and as a result the Council found no other harm other than that which is set out in its decision. However, the absence of harm or the commitment to meet other regulations such as Building Control requirements would be matters which carry very limited weight within this appeal proposal.

Harms

40. I have found that the proposed development would be located away from services and facilities, with limited choice in transport options and employment opportunities. As a result, the appeal site would not represent a sustainable pattern of growth limiting the need to travel while offering a genuine choice of transport modes. I place substantial weight on this harm.

Other Material Considerations

41. I have also considered the appeal decision provided by the appellant⁷. In this case the planning balance was different, such as greater affordable housing above the policy requirement. This other site was also considered to be within a sustainable location for new development⁸.
42. Similarly, I have considered the Council's report for Land Rear of 9 Church Road Wickham Bishops⁹. This site is also different as the affordable housing offer exceeded policy by 10%, a 50% provision of twenty-five affordable dwellings in total. This over provision of affordable housing was held to weigh substantially in favour of the proposed development¹⁰. Additionally, the report states that Wickhams Bishops is identified as a larger village in the Local Plan. It has not, therefore, been robustly shown that the appeal before me would have the same services, facilities, and access to transport choices as this other site.
43. I accept there is an acute and pressing need for affordable housing within the district and this is addressed as part of my planning balance. However, it is clear from these other decisions, and the planning balance I have undertaken as part of this appeal, that the overall conclusions of these decisions are informed by the specific and individual circumstances of each case. For these reasons, the other decisions do not direct me away from my overall findings as part of this decision.
44. The same reasoning would apply to the cases set out at paragraph 6.68 of the appellant's statement of case and I have dealt with these earlier in this decision.

⁷ Appeal Ref: APP/X1545/W/23/3331398.

⁸ Paragraph 39.

⁹ Maldon Council Ref:23/00123/OUTN.

¹⁰ Para 3.2.1 of the Report of Director of Service Delivery to North Western Area Planning Committee, 13 September 2023.

Conclusion

45. Having carefully considered all the evidence, I attribute all the public benefits significant weight when considered cumulatively. However, I do not consider that this significant weight amounts to a consideration of such materiality that it outweighs the conflict with the development plan which attracts substantial weight as set out above.
46. Accordingly, there is no reason to indicate that a decision should be taken other than in accordance with the development plan when taken as a whole¹¹. I therefore conclude that the appeal should be dismissed.

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INSPECTOR

¹¹ Given my overall findings, I do not need to carry out an appropriate assessment as required under the Conservation of Habitats and Species Regulations 2017 (as amended).

ANNEX A: APPEARANCES

FOR THE APPELLANT:

Mr Leigh BA (Hons) MA MRTPI – Planning Consultant, Q Square.

Mr Blamey BSc (Dunelm) MSc (Eng) MCIHT – Director, RGP Consulting Engineers Limited.

FOR THE LOCAL PLANNING AUTHORITY:

Mr Dimano BA (Hons) Post Graduate Diploma - Senior Planning Officer.

Mr Lawrence BTP MRTPI MRICS - Team Manager.

INTERESTED PARTIES:

Cllr Bourn – Chair, Goldhanger Parish Council.

Cllr Reynolds – Vice Chair, Goldhanger Parish Council.

Cllr Thompson – Ward Member, Maldon District Council.

Mr Jermy – Local Resident.

Mr Curd – Local Resident.

Mr Bourn – Local Resident.

ANNEX B: DOCUMENTS ACCEPTED DURING THE HEARING:

HD1. Appeal decision Ref: APP/X1545/W/23/3331398 at Land North of The Groves, Burnham Road, Latchingdon, Essex.

HD2 – Malden District Council, Report of Director of Service Delivery to the North Western Area Planning Committee dated 5 October 2022 for Outline application with all matters reserved for up to 18 dwellings with a provision for affordable housing at Golf Driving Range, Burnham Road, Woodham Mortimer. Malden Ref: 22/00482/OUT.

HD3 - Malden District Council, Report of Director of Service Delivery to the North Western Area Planning Committee dated 13 September 2023 for the demolition of the existing dwelling and the erection of two dwelling houses, landscaping and associated parking and visibility splays at Slate Hall Cottage, Lower Burnham Road, Stow Maries, CM3 6SG. Malden Ref: 23/00024/FUL.

HD4 - Malden District Council, Report of Director of Service Delivery to the South Eastern Area Planning Committee dated 7 December 2022 for the erection of 4 bedroom bungalow, detached garage and new vehicular access at Homelands, Southminster Road, Asheldham, CM0 7DZ. Malden Ref: 22/00896/FUL.

HD5. Signed legal agreement dated 13 September 2024.

HD6. No 95 Bus Service Timetable.

HD7. Photographs of the B1026.