



Appeal Decision

Site visit made on 31 March 2025

by **P Terceiro BSc MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 April 2025

Appeal Ref: APP/X1545/W/24/3349937

Land to the north of Rectory Road, Rectory Road, North Fambridge CM3 6NG

- 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 Friedlein against the decision of Maldon District Council.
 - The application Ref is OUTM/MAL/22/00792.
 - The development proposed is the demolition of 6no. existing agricultural buildings and the erection of up to 32 dwellings including the provision of 40% affordable housing.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner heading above is taken from the application form. However, I have removed any wording which is not an act of development.
3. The appeal relates to an application for outline planning permission with all matters reserved for subsequent consideration. Accordingly, I have had regard to the submitted plans but have considered all elements shown as indicative.
4. The National Planning Policy Framework (the Framework) was updated on 12 December 2024. However, the sections pertinent to this appeal have not changed to such an extent as to affect the matters raised by the main parties. It has not therefore been necessary to seek their views, and the revised version has been taken into account in this decision.

Main Issue

5. The main issues are:
 - whether the appeal site is an appropriate location for the proposal having regard to the development plan and its effect on the character and appearance of the area; and
 - whether the effects of the development are such that a legal agreement to secure the provision of matters including affordable housing, healthcare, education, public open space and mitigation for recreational disturbance to the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) zone of influence sites is required.

Reasons

Location

6. The appeal site is located outside the village of North Fambridge. Policy S8 of the Maldon District Approved Local Development Plan 2014 – 2029 (2017) (LDP) sets out the settlement hierarchy where North Fambridge is identified as a smaller village. Sustainable development within defined settlement boundaries is supported. Outside settlement boundaries, within the countryside, development is restricted to a number of categories and where the intrinsic character and beauty of the countryside is not adversely impacted upon. The appellant does not suggest that the proposal would fall into any of these categories.
7. The site is in a rural setting, on the edge of North Fambridge at the western end of Rectory Road beyond housing arranged in a linear manner on either side of the road. There is a clear distinction between the suburban area that exists to the east of the appeal site and the countryside that lies to the west. Up to and including No 20 Rectory Road (No 20), the road has a very suburban character and appearance with large, detached dwellings. Beyond No 20 the road becomes an unmade bridleway that leads into the countryside with well-established trees and hedgerows.
8. The site consists of a number of buildings along its boundary with Rectory Road which while of a simple design and dilapidated condition in some cases, display the form and function similar to that of a farmyard. The land to the rear of these buildings is considered to be agricultural. As such, despite being located close to North Fambridge, the site offers a clear difference in character between the built-up area and the open countryside on the western end of Rectory Road. The site makes a positive contribution to the rural landscape setting of the village and is therefore sensitive to change.
9. The proposed development would introduce up to 32 dwellings within this agricultural land beyond the defined edge of the settlement. Consequently, irrespective of its layout, the proposal would encroach onto the countryside and lead to a detrimental urbanisation and loss of a parcel of land that makes an important contribution to the rural setting of the settlement. While the topography of the site slopes down towards the rear, the visual harm of the proposed development to the character and appearance of the countryside would nevertheless be substantial, and the development would be prominent in views from Rectory Road and bridleway. Given such, the proposal would harm the character of the area.
10. Thus, the appeal site would not be an appropriate location for the development, which would result in harm to the character and appearance of the area. It would be in conflict with LDP Policies S1, S8, D1 and D2 which seek, amongst other things, to protect the countryside and promote high quality design having regard to the existing character of the surrounding area.

Whether a legal agreement is needed

11. LDP Policy H1 sets out that all housing developments of more than 10 units will be expected to contribute towards affordable housing provision to meet the identified need in the locality and address the Council's strategic objectives on affordable

housing. The evidence indicates that in the case of the appeal scheme this contribution would be of 40%.

12. The occupation of the development would likely increase the need for healthcare facilities in the surrounding area, and the parties agree there would be a need for contributions towards schools and open space. I have no substantive evidence to suggest otherwise.
13. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) require that permission may only be granted for a development where the competent authority has ascertained that it will not adversely affect the integrity of the European Designated Habitats, applying the precautionary principle.
14. The Council has identified that the development falls within the zone of influence of one or more European designated sites. These comprise the Essex Estuaries Special Area of Conservation (SAC), Blackwater Estuary Special Protection Area (SPA) and Ramsar site, Dengie SPA and Ramsar site, Crouch and Roach Estuaries SPA and Ramsar site which are extensive areas of estuaries which support breeding and non-breeding birds and their coastal habitats. The conservation objectives are to seek to ensure that the disturbance of qualifying features is not increased.
15. Through the addition of up to 32 dwellings, the proposal would generate an increase in population which has the potential to increase recreational pressure on the European designated sites. Recreational use of this sites can result in damage to habitats and disturbance to the birds. Therefore, when considered either alone or in combination with new plans or projects, this development would have a likely significant effect on the integrity of the European designated sites, in the absence of avoidance and mitigation measures. The parties agree that a financial contribution towards the Council's RAMS would be necessary to provide that mitigation.
16. The Council indicates that a S106 legal agreement is required to secure the above financial contributions, which I find would be an appropriate mechanism taking into account the tests set out in the Framework and in the Planning Practice Guidance. However, although I acknowledge that the appellant is willing to enter into such an agreement, there is none before me. In the absence of a completed legal agreement, the provision of the necessary contributions cannot be secured.
17. The proposal would therefore conflict with LDP Policies S1, H1, I1, D1, N1 and N3, where these policies require developers to contribute towards local and strategic infrastructure and services necessary to support the proposed development, seek to secure affordable housing, support development that improves social conditions in the area and provides public open spaces.
18. Reference is made to LDP Policy T2 in reason for refusal 3. However, this policy relates to accessibility and is of limited relevance in the context of this reason for refusal.

Other Matters

19. The appellant asserts that a series of planning applications recently approved have changed the character of the village. However, limited information regarding

these schemes is before me, so I cannot be certain that these developments would be comparable with the proposal before me. In any event, I have determined this appeal on its own merits based on the evidence before me.

20. I understand that this proposal follows previous proposals for this site, and it seeks to deliver more dwellings than those previously considered. While this may be the case, for the reasons set out above, I find that the proposal would be in an unsuitable location and would be harmful to the character of the area in its own terms.

Planning Balance

21. For the reasons stated above, the appeal site would not be an appropriate location for the development, and the proposal would result in harm to the character and appearance of the area. Further, due to the lack of a complete legal agreement, I am not satisfied that the proposal would deliver the requisite affordable housing and financial contributions towards infrastructure. In the absence of a financial contribution towards RAMS, there is no certainty that the proposal would not adversely affect the integrity of the European designated nature conservation sites. The proposal would be contrary to the development plan in this regard.
22. The Council accepts that it cannot demonstrate a five-year supply of deliverable housing sites. The latest evidence provided by the Council indicates that this stands at 2.7 years, which is not disputed by the appellant. This is a substantial shortfall. On this basis Paragraph 11 of the Framework would be engaged. However, in accordance with paragraph 195 of the Framework, the presumption in favour of sustainable development does not apply in circumstances like this where the proposal is likely to have a significant effect on a Habitats site, either alone or in combination with other plans or projects.
23. The appeal proposal would deliver up to 32 new dwellings that would make a positive contribution to the local housing need. The site is a small one, so the scheme could be built-out relatively quickly. Given the Council's housing land supply position, I attach considerable weight to these benefits.
24. Some economic benefits would be accrued during the construction phase. Future residents would support local services as well as the vitality of the rural community. However, given the proposed number of dwellings, these benefits would be moderate.
25. The site is within walking or cycling distance to some services and facilities within the village and there would be scope to utilise public transport to reach other larger settlements. Therefore, future residents would not be fully reliant on the private car. This matter would carry moderate weight in favour of the scheme.
26. Taken together, these benefits attract significant weight in favour of the proposal, but would not justify the harm in terms of unsuitable location, harm to the character of the area, and absence of the necessary financial contributions to mitigate the impacts of the development.

Conclusion

27. The proposal conflicts with the development plan as a whole and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

P Terceiro

INSPECTOR

Richborough