



Appeal Decision

Site visit made on 24 April 2025

by **C Shearing BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 May 2025

Appeal Ref: APP/X1545/W/24/3350876

Coppingers, Maldon Road, Latchingdon, Essex CM3 6LF

- 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 Stephen Hodgkinson against the decision of Maldon District Council.
 - The application ref is OUTM/MAL/23/01038.
 - The development proposed is described as 'outline application with all matters reserved for up to 10 no. dwellings (Class C3) and all associated development'.
-

Decision

1. The appeal is allowed and outline planning permission is granted for up to 10no. dwellings (C3) and all associated development at Coppingers, Maldon Road, Latchingdon, Essex CM3 6LF in accordance with the terms of the application, Ref OUTM/MAL/23/01038, subject to the conditions set out in the schedule below.

Preliminary Matters

2. The planning application sought outline planning permission with all matters reserved. I have determined the appeal on this basis and have treated any drawings which relate to the matters of layout, scale, appearance, access and landscaping as illustrative.
3. A Unilateral Undertaking dated 23 September 2024 has been submitted with the appeal (the UU), which relates to mitigation for effects on the Essex Coast, healthcare and affordable housing. This has been taken into account in determining the appeal.
4. During the course of the appeal a new National Planning Policy Framework has been published (the Framework). The main parties were given the opportunity to comment on the implications of this change for the appeal scheme, and I have taken the responses received into account.

Background and Main Issues

5. Since the publication of the new Framework, the Council have stated that it will no longer pursue the first reason for the refusal of planning permission, which related to the suitability of the site's location for new housing. The Council have also confirmed that it is of the view that the UU sufficiently covers the necessary obligations referred to in the 4th, 5th and 6th reasons for refusal on its decision notice. As these matters are no longer in dispute between the main parties I have not dealt with them as main issues of the appeal.

6. The main issues are therefore: the effects of the proposal on protected species, and; whether the site would deliver appropriate measures for the disposal of foul water drainage.

Reasons

Protected Species

7. Great Crested Newts (GCNs) are European protected species, protected under the Conservation of Habitats and Species Regulations 2017 (the Regulations) and appear on the list of species of principal importance in England¹. While there are a number of watercourses within 250m of the site, the appellant's further ecological assessment identified one pond to support GCNs and two others were not possible to survey at the time. Given the GCN record for the surrounding area and habitat pathways between the waterbodies and the site, the presence of GCNs within those ponds was therefore also assumed. The appellant's ecological assessment suggests the passage of amphibians into the red line boundary of the appeal site can be easily facilitated. As such, the likely presence of this protected species on the appeal site is supported by credible evidence.
8. The appellant proposes to use the District Level Licensing (DLL) scheme to comply with the legal obligation to protect GCNs. Given the site's inclusion in an amber risk zone for GCNs identified by Natural England, it is one where DLL may be appropriate. During the course of the appeal the appellant has provided an Impact Assessment and Conservation Payment Certificate (IACPC) countersigned by Natural England, and the site boundary it includes responds to the boundaries of the appeal site and ownership boundary. Accordingly, this confirms that the scheme is suitable for DLL, meets the favourable conservation status test and secures adequate compensation for any impact.
9. Regulation 9(3) of the Regulations requires a competent authority to have regard to the requirements of the associated Directive so far as it may be affected by the exercise of its functions. This includes any proposal that might lead to the deterioration or destruction of the breeding sites and resting places of European protected species under Article 12(1). This includes GCNs, irrespective of whether or not they are present at the time the development is carried out. Based on the information provided I am satisfied that the proposal would not offend Article 12(1) and that the mitigation hierarchy has been followed and there would be no significant harm to the long-term conservation status of the GCNs which may be present on the site.
10. I am satisfied that the conditions would provide the necessary detail and certainty to secure the required mitigation and I have no reason to doubt that they would be effective for this purpose. Similarly, I have no reason to doubt that a mitigation license would be issued on the basis of the evidence before me and it is not for me to determine whether the legal tests for a license would be met, as this would duplicate the function of another regulatory body.
11. With regard to reptiles, the appellant's ecological assessment finds the site to be suboptimal for these species in light of a walkover of the site, and the Council agree that further reptile surveys and mitigation would not be necessary. I have no

¹ England Biodiversity List published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006

strong reason to reach a different view and the proposal would be acceptable insofar as reptiles are concerned.

12. In conclusion on this main issue, subject to conditions, no significant harm to GCNs or reptiles would be caused. The proposal would comply with Policy N2 of the Maldon District Local Development Plan 2017 (the LDP) insofar as it requires provision to mitigate any negative biodiversity impacts on protected species.

Foul Water Drainage

13. The development is in the catchment of the Latchingdon Water Recycling Centre, which Anglian Water Service (AWS) report does not have capacity to treat foul water flows from the development. The Environment Agency have questioned the treatment and discharge capacity in the area, and whether it could accommodate new foul water flows. The AWS report, however, that they are obligated to accept the foul flows from the development if it had planning permission and would take the necessary steps to ensure that there was sufficient treatment capacity should planning permission be granted. I therefore appreciate the need for AWS to plan effectively for the proposed development in order to avoid harm to the water course.
14. There is little information relating to the foul water arrangements of the proposed development, including the intended point of its connection to the public network. However, based on the evidence before me, I see no reason why a suitable solution could not be achieved. I note that a similar situation existed at the time of the appeal at The Groves² and a condition was imposed to secure details of foul water drainage, including connection points and discharge rates to the public sewer, to be provided at an early stage of the development. I see no reason why a similar approach should not be used here, particularly given the scale of development proposed and in the absence of evidence to the contrary.
15. In conclusion on this main issue, subject to the imposition of a relevant condition, the proposal would be acceptable in terms of its foul drainage arrangements and effects on Latchingdon Brook. The proposal would comply with policy D2 of the LDP which requires development to minimise its impacts on the environment including through minimising water pollution.

Other Matters

Location for Housing

16. Policy S8 of the LDP states that the Council will support sustainable developments within the defined settlement boundaries, and sets out a settlement hierarchy where Latchingdon is included as a 'Smaller Village'. The appeal site lies outside its defined boundaries. Accordingly, Policy S8 goes on to state that outside the settlement boundaries, the Garden Suburbs and Strategic Allocations, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided it is for one of the development types then listed. The proposal would not be for one of the development types listed and would therefore be in conflict with Policy S8, as well as Policy S2 which relates to the locations for strategic growth. This conflict with the development plan is discussed further below in the planning balance.

² APP/X1545/W/23/3331398 Land North of The Groves, Burnham Road, Latchingdon

Healthcare Contribution

17. The UU includes provision for a financial contribution of £490 per dwelling towards the improvement of facilities within the primary care network serving the site. Policies S1 and I1 of the LDP together seek to ensure that development contributes towards local and strategic infrastructure and services necessary to support the proposed development and mitigate identified issues. Policy I2 relates to the delivery of healthcare to meet the needs of the District.
18. The NHS provided comments during the course of the planning application which demonstrate the need for additional facilities to support the uplift in residents arising from the proposed development. The extent of the contribution sought is informed by a formula relating to the required additional floorspace to support the development and associated build costs. On this basis I am satisfied that the obligation for healthcare contributions meets the relevant tests set out in the CIL Regulations and the Framework.

Affordable Housing

19. The UU would secure a contribution to affordable housing only in the event that the floorspace of the development would trigger the policy requirement at 1000sqm. I note the Council find the UU to be acceptable for this purpose and I have no strong reason to reach a different view. Based on the information before me, the obligations relating to affordable housing would similarly meet the relevant tests set out in the CIL Regulations and the Framework.

Habitats Sites

20. Maldon District lies within the 'recreational zone of influence' for the following European designated sites on the Essex Coast: 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. The Essex coastline is one of importance for birds and their habitats, and is home to internationally important numbers of breeding and non-breeding birds. The coast is a major destination for recreational use, including walking, sailing, bird watching and dog walking, of which the majority is undertaken by people who live in Essex. The proposal, through increasing the local population, would therefore be likely to have a significant effect on the qualifying features of the designated sites when considered either alone or in combination with other projects.
21. The new residents of the development could visit the Essex coast for recreational purposes, and this could take place throughout the duration of the development's life, causing adverse effects on the designated features of those habitat sites. The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) accordingly seeks to strike a balance between new residential development and mitigating additional recreational pressures on these habitat sites associated with growth.
22. The RAMS sets out a strategic approach to mitigation that can be secured in the form of a developer contribution which would fund measures including education and communication as well as habitat based measures including fencing and waymarking, habitat creation and site monitoring. Based on the information before me, I have no strong reason to believe that a contribution towards those measures

would not be successful in mitigating the effects of the proposal. The UU would secure a financial contribution for each new dwelling, payable prior to commencement of development and the payment would relate to mitigation as specified in the RAMS. The document appears fit for this purpose and would meet the relevant tests for a planning obligation.

23. For these reasons the proposal would be acceptable in terms of its effects on the designated habitat sites, and would avoid adverse effects upon them and their conservation objectives. The proposal would comply with policies D1, N1 and N2 of the LDP and the objectives of the Framework insofar as they relate to protection of habitat sites and biodiversity, as well as LDP Policy I1 which relates to developer contributions to mitigate impacts of development.

Flooding

24. The Council's officer report includes consideration of flood risk and is informed by relevant consultee responses. The appeal site is within Flood Risk Zone 1, although it adjoins areas of greater flood risk closer to Latchingdon Brook to the west. Policy D5 of the LDP directs development towards Flood Risk Zone 1. The site is similarly not in an area identified by the Environment Agency as being at risk for surface water flooding. While evidence has been provided of some pooling of water on the site, this does not provide a substantive reason to question the site's risk of flooding.
25. The Flood Investigation Report³ provided by a third party appears to relate to an area further north, beyond where Latchingdon Brook crosses Maldon Road. That is an area recognised to be at risk of flooding and the Report refers to particular issues contributing to flooding in that area. Given the distance between the appeal site and those areas, and the difference in their identified risk of flooding, it is not apparent that the same issues would be applicable to the appeal site, nor has it been substantiated that the proposal would unacceptably worsen those existing conditions. I find the proposal to be acceptable in terms of its flood risk and conditions are imposed in respect of management of surface water drainage. The grant of planning permission would not negate the need for any separate consent from the Environment Agency should it be required.

Further Matters

26. Interested parties raise concerns for the effects of the proposal on local services and facilities. As above, the proposal would make contributions towards healthcare and there is not substantive evidence of other contributions which would be necessary to make the development acceptable in planning terms. Concerns relating to the low level background noise of nearby commercial uses could be adequately addressed by condition, and I see no reason this would give rise to unacceptable living conditions for future occupants, given the presence of other residential uses nearby.
27. I appreciate concerns relating to the effects of the development on the living conditions of nearby occupants, particularly those which adjoin the appeal site and have gardens and habitable room windows close to the site's boundaries. However, as the proposal is in outline with all matters reserved, these issues would fall to be considered at the reserved matters stage, when the layout and appearance of the

³ Flood Investigation Report by Essex County Council 2012

homes were established. I have no strong reason to believe that an acceptable solution could not be achieved.

28. Based on the evidence, effects on the local highway would not amount to severe impacts as set out in the Framework, and details of the point of access would similarly be considered as part of the reserved matters submissions. Any effects on air quality and light pollution are unlikely to be significant given the number of homes proposed.
29. There is not reasonable evidence to support increased fear of crime, and Planning Practice Guidance (PPG) reiterates that the courts have in general taken the view that the impacts of development on the value of a neighbouring property could not be a material consideration, since planning is concerned with land use in the public interest. Other issues raised by third parties have been considered within the Council's report and are informed by relevant consultation responses. I have no strong reason to reach a contrary view on those other matters.

Planning Balance

30. The Council accept that it is no longer able to demonstrate an appropriate land supply for housing and reports just a 2.7 year supply. Accordingly, the provisions of paragraph 11d) of the Framework are relevant to the appeal. The application of policies in the Framework that protect areas or assets of particular importance do not provide a strong reason for refusing the development proposed. As such the balancing exercise of 11d)ii. should be undertaken.
31. The adverse impact of granting planning permission has been found to be the conflict with the Council's spatial strategy relating to the location of development. This arises as a result of the appeal site being outside the defined boundary of Latchingdon. Nonetheless, I observed the site to be well connected to Latchingdon and a consistent footpath provides a reasonable route to the services and facilities in the village, including its onward bus links. The site's location therefore supports alternatives to car use and sustainable modes of transport. Furthermore, the site is positioned among other development which lines Maldon Road and which extend back from the road to varying extents. The proposed development would be positioned directly between commercial uses to the south and the two storey homes of Thatchers Croft to the north. The proposal would therefore be well related to other built forms on this side of Maldon Road. Details of the appearance, scale, layout and landscaping of the development are not before me, however for the reasons given I have no strong reason to doubt that a suitable solution, which respects the intrinsic character of the area, could be achieved. The Council do not defend the conflict with policies S1 and S8, given the significant changes to its housing land supply arising from the new Framework. Taken together with the reasons set out above, I ascribe limited weight to the conflict identified with the Council's spatial strategy arising from the site's location.
32. In terms of benefits, the proposal would provide up to 10 new homes. While this is only a modest contribution to the identified shortfall, the proposal would nonetheless make a positive contribution with some tangible effect and the Framework acknowledges the important contribution which small and medium sized sites can make towards the housing requirement of an area, and are often built-out relatively quickly. The proposal could also deliver a contribution to affordable housing if its size were to trigger the policy requirement, although this

cannot be established with certainty at this stage. Albeit outside the red line boundary, the undeveloped land towards the back of the site is intended to provide biodiversity net gain through uplifts in on-site habitats and hedgerows. Other benefits may arise from the proposal which attract some weight, including the economic benefit associated with the construction process and ongoing expenditure into the local economy by future residents. Taken together, these benefits attract significant weight.

33. For these reasons, when assessed against the policies in the Framework as a whole and having particular regard to the key policies in the Framework referred to in footnote 9 insofar as they are relevant to this outline proposal, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits. The proposal therefore benefits from the presumption in favour of sustainable development. This amounts to a material consideration of sufficient weight to indicate the decision should be made other than in accordance with the development plan.

Conditions

34. The Council has provided a list of suggested conditions that it considers would be appropriate. I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.
35. Standard conditions are imposed relating to the submission of the reserved matters and also relating to relevant timescales for reserved matters and implementation. To help protect the living conditions of nearby occupants, a Construction Management plan is necessary. To provide an acceptable standard of accommodation and given the nearby uses, a condition is imposed relating to noise attenuation.
36. For environmental reasons, conditions are necessary relating to treatment of surface water both during construction and operational stages including ongoing maintenance arrangements, details of licencing for GCNs, and incentives for sustainable travel. Details of the intended ecological enhancements and appropriate lighting for bats are also necessary. As set out above, a condition is necessary relating to foul water drainage and I have adopted the wording used in a nearby appeal. Those conditions relating to the construction process, consideration of background noise, surface water, and the GCN licensing need to be satisfied prior to commencement to ensure their consideration at an early stage and because their consideration at a later stage would limit the scope of measures which could be used.
37. Since details of landscaping would inevitably include details of hard and soft landscaping, and the reserved matters would be subject to their own conditions in due course, I do not consider it necessary to specify those details again by condition. This would similarly be the case for car parking and the access, whose details would be subject to consideration at the time. Given the characteristics of the site and the findings of the appellant's Arboricultural Survey and Impact Assessment, conditions relating to trees have not been shown to be necessary, and it is not apparent that additional biodiversity effects and mitigation measures require further consideration by condition.

38. A condition has been suggested to secure sums of money for improvements to nearby bus stops. However, based on the evidence before me it is not apparent that those sums would be necessary to make the development acceptable, nor that the condition would adhere to the PPG in respect of requiring payments by conditions. A condition relating to noise emissions from Kismet Kebabs would not meet the test of reasonableness given it sits outside the appellant's control, however as above, a condition relating to noise attenuation, if it is required, has been imposed.

Conclusion

39. The proposed development would conflict in part with the development plan. However, there are material considerations of sufficient weight, arising from the approach of the Framework, which indicate that a decision should be made other than in accordance with it. For the reasons given, the appeal is allowed.

C Shearing

INSPECTOR

Richborough

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale ("the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Applications 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 take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved Plan, and it shall include details of:
 - parking of vehicles on the site for operatives and visitors;
 - locations of loading and unloading plant and materials;
 - storage of plant and machinery, and;
 - wheel and underbody washing facilities.
- 5) Development shall not commence until details have been submitted to, and approved in writing by the local planning authority, to demonstrate measures to minimise the risk of off-site flooding caused by surface water run-off and groundwater during the construction process. The construction process shall be carried out in accordance with those approved details.
- 6) Prior to the commencement of development (other than site clearance and demolition) a noise impact assessment which considers the effects of the nearby commercial and industrial uses on the proposed development, and details of any noise attenuation measures for the new houses if required, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and any attenuation measures shall be maintained thereafter.
- 7) No development (other than site clearance and demolition) shall take place until details of a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the site, has been submitted to and approved in writing by the local planning authority. The development shall be carried out only in accordance with the approved details and the scheme shall be operational prior to the first occupation of the development. Those details shall include:
 - limiting discharge rates to 1l/s for all storm events up to and including the 1 in 100 year plus 45% allowance for climate change storm event. All relevant permissions to discharge from the site into any outfall should be demonstrated;
 - sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 45% climate change event;

- demonstration that all storage features (inclusive of all permeable paving) can half empty within 24 hours for the 1 in 30 plus 45% climate change critical storm event. Where half drain down times are greater than 24 hours, it must be demonstrated that the features are able to accommodate a 1 in 10 year storm event within 24 hours of a 1 in 30 year event plus climate change;
 - where the discharge is to a watercourse, the outfall should be above the 1 in 100 plus 45% climate change level or alternatively the effect of surcharging of the outfall should be modelled and appropriate measures should be put in place;
 - provision of 10% urban creep allowance;
 - final modelling and calculations for all areas of the drainage system, including modelling of the permeable paving;
 - the access road, as well as the private driveways, to be permeably paved;
 - the appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753. This must also address runoff from the roofs. The location of any rainwater down pipes from the dwellings connected into the permeable paving sub-base to treat the runoff from the roofs, should be shown on the drainage plan;
 - detailed engineering drawings of each component of the drainage scheme;
 - a final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features, and;
 - details of the ongoing maintenance and responsibilities for the elements of the system.
- 8) No development shall commence until the local planning authority has been provided with either:
- a) A licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorising the specified development to go ahead, or;
 - b) A GCN District Level Licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorising the specified development to go ahead, or;
 - c) A statement in writing from Natural England to the effect that it does not consider that the specified development will require a licence.
- 9) As part of the Reserved Matters for landscaping, details of a Biodiversity Enhancement Strategy shall be submitted. This shall include, but not be limited to:
- The purpose and conservation objectives for the proposed enhancement measures;
 - Full details and locations of the enhancement measures;

- A timetable for implementation of those measures, and;
- Details of any required on-going maintenance.

The development shall be carried out in accordance with the approved details and timetable for implementation.

- 10) Prior to the construction above damp-proof course, a scheme for on-site foul water drainage works, including connection point(s) and discharge rates to the public network, shall be submitted to and approved in writing by the local planning authority. The scheme (including the connection to mains drainage) shall be implemented as approved prior to the first occupation of any dwelling or building on the site.
- 11) Prior to the first occupation of the development, each dwelling hereby approved shall be provided with a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator.
- 12) No external lighting to the site, including street lighting, shall be installed until details have first been submitted to and approved in writing by the local planning authority. Those details shall demonstrate how the lighting shall be installed so not to disturb or prevent bats using their territory or having access to breeding sites and resting places.

End of Schedule