



Appeal Decision

Hearing held on 3 April 2025

Site visit made on 3 April 2025

by T Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2025

Appeal Ref: APP/X1545/W/24/3338556

**Land at Manor Farm, Walden House Road, Great Totham Easting (x) 585350
Northing (y) 211900**

- 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 Mersea Homes Ltd against the decision of Maldon District Council.
 - The application Ref is OUTM/MAL/22/01257.
 - The development proposed is up to 49 new residential properties with all associated access, servicing, parking, landscaping, open space, drainage, utilities and associated infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for up to 49 new residential properties with all associated access, servicing, parking, landscaping, open space, drainage, utilities and associated infrastructure at Land at Manor Farm, Walden House Road, Great Totham Easting (x) 585350 Northing (y) 211900 in accordance with the terms of the application, Ref OUTM/MAL/22/01257 and subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mersea Homes Ltd against Maldon District Council. That application is the subject of a separate decision.

Preliminary Matters

3. Two revised plans post-date the Council's decision, a Development Parameter Plan (Ref JBA22/205-SK02 Rev B) and a Landscape Strategy Plan (Ref JBA 22/205-SK01 Rev B). These plans effectively omit a small part of the appeal site from the developable areas for residential use so that they would not be within a part of the site which is at higher risk of flooding. Drawings have also been produced relating to two vehicular access points. However, the evidence indicates that these are illustrative only and the application is in outline with all matters reserved.
4. Whilst it is not the purpose of the appeal process to evolve a scheme, the amendments effectively relate to only a very minor change by omitting a small part of the site from the developable area for residential use, whilst clarifying the reference to a footbridge within the site. As such the admission of those plans would not represent a procedural unfairness to those with an interest in the scheme and I have considered those plans as part of the appeal.
5. The original application to the Council was refused on the basis of concerns over flood risk and with regard to a lack of a completed planning obligation to address

contributions to matters including the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS), affordable housing, education, medical services and the maintenance of the public open space proposed. The Council no longer has concerns with regard to flood risk and the other matters have been addressed through the provision of a planning obligation. The Council therefore stated that it did not wish to defend its original refusal reasons 1, 3 or 4.

Main Issues

6. The main issues are whether the site is suitable for the proposed development having regard to the Council's settlement strategy and the effect of the proposal on the character and appearance of the area.

Reasons

Whether the site is suitable for the proposed development

7. The development plan for the area is formed of the Maldon District Local Development Plan 2014-2029 (2017) (LP) and the Great Totham Neighbourhood Plan (2022) (NP).
8. The site sits outside of the Great Totham (South) settlement boundary. It is common ground between the main parties that Policy GTO1 of the NP allows for residential development outside of the settlement boundary, where the terms of Policy GTO1 Part B are met. Policy S8 of the LP, amongst other things states that outside of the defined settlement boundaries planning permission for development will only be granted provided it is for amongst other things additional development as identified in adopted neighbourhood plans.
9. Criteria B of Policy GTO1 of the NP states that development proposals to meet identified local housing needs on sites that are outside the settlement boundary will be supported where they meet all of the following criteria: i. It can be demonstrated that no available and deliverable site exists within the settlement boundary. ii. The site is well related to the settlement boundary, sharing a boundary on at least one side. iii. The site does not breach an existing defensible boundary, e.g. watercourse or main road, where there is not already development on both sides.
10. However, the site does not share a boundary with the settlement on at least one side. The settlement boundary sits on the opposite side of Walden House Road and this road is, in my view, a main road. The settlement boundary to the rear of properties adjoining the site on Catchpole Lane runs well within those rear gardens and not directly on the boundary with the site itself. Therefore, regardless of criteria i. the proposal would be in conflict with the Policy.
11. To conclude on this main issue, there would therefore be conflict with the settlement strategy and an in-principle policy harm owing to the conflict with Policy S8 of the LP and Policy GTO1 of the NP.

Character and appearance

12. The site is opposite Great Totham Primary School and residential properties fronting onto Walden House Road. Adjacent to the site are the gardens of further residential properties on Catchpole Lane. The majority of the remaining boundary of the site is formed by Catchpole Brook and the planting which sits close to its banks. The site is closely surrounded by built development on 2 of its sides and

due to the proximity of nearby buildings these heavily influence the character and appearance of the site giving it a partly suburban context.

13. Great Totham is regarded as an Arcadian Settlement, which the Characterisation Assessment¹ identifies as very low density development. However, the parts of Great Totham close to the site are not fully reflective of this pattern which on the whole hosts housing of a more regular density.
14. That being said, other Arcadian characteristics are evident such as the positioning of buildings that allow views between them, development being set back from roads, low level boundary treatment contributing to an open feel and the incorporation of landscaped boundary treatments. This affords a pleasant and verdant feel within this part of the village.
15. Such characteristics could be incorporated into the scheme during the reserved matters stage even if there would be some hedgerow loss to account for the access points. Features such as public open space, additional hedgerow and tree planting and the retention of the view from Walden House Road out towards the countryside would be reflective of the Arcadian characteristics.
16. I note the Council's concerns as to the documents that were not fed into the appellants LVA². However, for the Landscape Effects - Landscape Character - The Settlement Character of Great Totham, I must therefore adopt the appellants assessment of a negligible impact.
17. I also adopt the assessment of the appellant with regard to Landscape Effects – Landscape Character - Character of the Totham Wooded Farmland LCA as negligible. This is because the site is well related to and influenced by the existing built development within Great Totham. The LCA relates to a much wider area and will have to account for settlements within it. Therefore, there would be no significant harm arising from the proposal in terms of landscape effects.
18. I however do agree with the magnitude and significance of the visual effects identified by the Council. The views from viewpoints 1 and 2 on Walden House Road would be substantially altered, with the outlook over the open field restricted with views of housing, even accounting for allowances to maintain a view towards the countryside beyond. However, visual impacts would be reduced over time through the implementation of a landscaping scheme.
19. To conclude on this main issue, the proposal would cause moderate harm to the character and appearance of the area with particular regard to the effect of the proposal on the countryside principally as a result of its visual effects. The proposal would subsequently conflict with Policy S8 of the LP which amongst other things states that outside of the defined settlement boundaries planning permission for development will only be granted where the character and beauty of the countryside is not adversely impacted on. There would also be some conflict with Policy D1 of the LP which seeks to protect the amenity of surrounding areas taking into account amongst other matters, visual impact.
20. There would, however, be no conflict with Policy H4 of the LP which principally relates to effective use of land.

¹ Maldon District Characterisation Assessment Undertaken September 2006 Published July 2012.

² Essex Landscape Character Assessment (2003), Maldon District Historic Environment Characterisation (2008) & Maldon District Characterisation Assessment (2012).

21. The proposal would draw some conflict with the Framework³ at paragraph 187 where it states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the Countryside.

Other Matters

22. Whilst I note the close presence of Great Totham Primary School, there is nothing compelling which would indicate that the proposal would have any unacceptable adverse impact on highway safety. There is also no compelling evidence to indicate that the proposal would have any unacceptable adverse impact on biodiversity.
23. There is nothing to indicate that the developable areas of the appeal site would be at risk of flooding or that the proposal would increase flood risk elsewhere and the Council has withdrawn its concerns in relation to that matter. Nor is there compelling evidence that the site should remain undeveloped as a result of its agricultural grading. There is nothing firm to indicate that sewage infrastructure would be unable to cope with the development.
24. The positioning of properties to take account of the living conditions of nearby occupiers would be determined at reserved matters stage, although there is nothing to indicate that the number of dwellings proposed could not be accommodated. Disturbance during construction is an inevitable part of any development of this scale and is usually limited in duration. There is nothing to indicate that the properties would result in any unacceptable adverse pollution to the local area. A condition to address any issues relating to contaminated land is included.
25. Representations were made to the effect that the rights of adjoining occupiers under Article 1 of the First Protocol – protection of property of the Human Rights Act 1998, would be infringed as a result of the proposal. However, there is little to indicate that the positioning of the access points would result in light pollution that would result in any unacceptable harm to their living conditions. On that basis a grant of planning permission would not unacceptably interfere with the occupier's rights. It would be proportionate in the circumstances to allow the appeal.
26. My attention has been drawn to a nearby appeal decision⁴ by the Council. However, there is nothing to indicate that the circumstances relating to that site were the same as those before me particularly in terms of the type of development proposed and the locational characteristics of the site. I therefore afford it limited weight.

SAC/Ramsar/SPA

27. The evidence indicates that without appropriate mitigation the proposal would have an adverse effect on the integrity of the 'Essex Coast' habitat sites. Nearby sites include the Essex Estuaries SAC and the Blackwater Estuary Ramsar & SPA. These sites provide estuary habitats which support important populations of breeding birds as well as internationally important assemblages of wintering wildfowl.
28. The proposal would involve new residential accommodation within the zone of influence and could therefore result in impacts on the designated sites arising from

³ National Planning Policy Framework 2024.

⁴ Appeal Ref: APP/X1545/W/21/3269901 - Land East of Ruxley Cottage, Rectory Road, North Fambridge CM3 6NG.

increased recreational disturbance. An impact pathway is therefore present. Therefore, adopting the precautionary principle, and in the absence of any evidence to the contrary, I consider that as a result of the proposal, likely significant effects on the protected habitats sites cannot be ruled out.

29. I am therefore required to carry out an Appropriate Assessment. Increases in recreational pressure would be likely to have a detrimental impact on wildlife populations present because of disturbance to habitat. As such, the favourable conservation status of the species present would not likely be maintained. The development would be likely to have a detrimental impact on the delivery of the sites objectives, adversely affecting their integrity.
30. However, there is a tariff system in place to pay into a mitigation scheme (RAMS) relating to such potential impacts on the SAC/Ramsar and SPA. This is provided for within the planning obligation. Any potential impacts would therefore be adequately mitigated and there would be no adverse effects on the integrity of the sites.

Planning obligation

31. A completed planning obligation in the form of a unilateral undertaking has been submitted. The obligation includes provision for education, healthcare and library financial contributions to mitigate the impact of the development on those services and for the provision of 40% of the dwellings as affordable housing, the provision and management of open space within the development, the provision of a residential travel information pack to future residents aimed at promoting the benefits of sustainable transport and the provision of the RAMS payment.
32. Based on the evidence before me, the provisions within the planning obligation are necessary to make the development acceptable in planning terms. They are directly related to the development and fairly and reasonably related in scale and kind to the development. They therefore meet the relevant tests⁵.

Planning Balance

33. The proposal would conflict with the settlement strategy and would cause moderate harm to the character and appearance of the area with particular regard to the effect of the proposal on the countryside. There would be conflict with policies S8 and D1 of the LP and Policy GTO1 of the NP. The proposal would conflict with the development plan as a whole.
34. However, the Council does not have a 5 year supply of housing land (5YRHLS) with the 5YRHLS position agreed at 2.6 years. Paragraph 11d) of the Framework is therefore of relevance. Paragraph 11d) i) is not relevant in this case. I note the provisions of paragraph 14 of the Framework; however, the NP does not specify sites to meet its housing needs. As a result, it does not contain allocations to meet its identified housing requirement, therefore the second criteria of paragraph 14 of the Framework is not met.
35. In the context of a considerable shortfall of 5YRHLS, the provision of 40% or up to 19 affordable houses is afforded significant weight, a weighting which the Council agreed to at the Hearing. Additionally delivering up to 49 dwellings would make a notable contribution to the housing supply and is of significant weight. There would also be the provision of maintained open space, which, although subject to final

⁵ As set out in Paragraph 58 of the National Planning Policy Framework 2024.

detailing would include off road linkages between Catchpole Lane and Walden House Road. This would form a useful pedestrian route and recreation area for existing and proposed residents. The open space combined with the pedestrian route would be a benefit that is afforded moderate weight.

36. Aside from the emerging Local Plan, which is some way off Regulation 19 stage, there is no other obvious remedy to the housing shortfall in the short or medium term. This overall position indicates that the development plan is failing to meet its strategic challenges and the settlement strategy is not working effectively. The conflict with policies relating to these matters should therefore be afforded limited weight.
37. Consequently, the adverse impacts of granting permission would not significantly outweigh the benefits when assessed against the policies in the Framework taken as a whole. This is having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, all of which the proposal would provide. As such, the material considerations indicate a decision other than in accordance with the development plan.

Conditions

38. Conditions 1 and 2 are required to define the development. Conditions 3, 8, 17 and 20 are necessary in the interests of biodiversity. Condition 4 is necessary in the interests of the living conditions of nearby occupiers. Conditions 5, 9 and 10 are necessary in the interests of the character and appearance of the area. Condition 6 is necessary so that any archaeological interest on the site is accounted for. Conditions 7, 16, 18 and 19 are necessary to secure appropriate drainage of the site. Conditions 11, 12, 13 and 14 are necessary in the interests of highway safety. Condition 15 is necessary to encourage the use of more sustainable modes of transport. Condition 21 is required to ensure that any contaminated land issues are addressed.

Conclusion

39. For the reasons set out above, the appeal should be allowed.

T Burnham

INSPECTOR

SCHEDULE OF CONDITIONS

1) Details of the Access, Appearance, Landscaping, Layout and Scale (hereinafter called "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. Application(s) for approval of the Reserved Matters shall be made to the Local Planning Authority no later than three years from the date of this permission. 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.

2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: GT.SK01, JBA22/205-SK02 Rev B.

3) No development including any site clearance or groundworks of any kind shall take place within the site until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include the following.

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of "biodiversity protection zones".
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

4) Prior to the commencement of the development the applicant shall submit in writing a Construction Management Plan to the Local Planning Authority for approval.

The plan shall include a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution.

The approved Plan shall be adhered to throughout the construction period. The Plan shall provide for safe access to the site and the following all clear of the highway:

- I. The parking of vehicles of site operatives and visitors;
- II. Loading and unloading of plant and materials;
- III. Storage of plant and materials used in constructing the development; and
- IV. Wheel and underbody washing facilities.

The construction management plan must also consider the following requirements:

- V. no waste materials should be burnt on the site;
- VI. the measures to minimise dust emissions;
- VII. the measures to control noise and minimise the impact of noisy activities on residential amenity; and
- VIII. hours of works: works should only be undertaken between 0730 hours and 1800 hours on weekdays; between 0800 hours and 1300 hours on Saturdays and not at any time on Sundays and Public Holidays.

5) No equipment, machinery or materials shall be brought to the site for the purposes of the development (excluding any required archaeological work) until a written statement detailing the trees and hedgerows to be retained on the site has been submitted to and approved in writing by the Local Planning Authority. The submitted assessment shall include a survey and assessment of all trees and hedgerows on the site and shall identify on a scaled drawing those trees and hedgerows to be retained, where arboricultural work is proposed and protection measures to be included for retained trees and hedgerows. The approved protection measures shall be implemented in accordance with the approved details, and thereafter maintained for the duration of the works.

6) No development including any groundworks of any kind shall take place within the site until the applicant or their agents; the owner of the site or successors in title has submitted an archaeological assessment by an accredited archaeological consultant to establish the archaeological significance of the site. Such archaeological assessment shall be approved by the Local Planning Authority and will inform the implementation of a programme of archaeological work. The development shall be carried out in a manner that accommodates such approved programme of archaeological work, and the programme of work shall be implemented in advance of any other groundworks being undertaken.

7) No works other than ground works shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme should include but not be limited to:

- Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753.
- Limiting discharge rates to 2.17l/s for all storm events up to and including the 1 in 100 year rate plus 45% allowance for climate change subject to agreement with the relevant third party/ all relevant permissions to discharge from the site into any outfall should be demonstrated.
- Provide 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 40% climate change event.
- Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event.

- Final modelling and calculations for all areas of the drainage system.
- 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.
- 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.
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall subsequently be implemented prior to first occupation. It should be noted that all outline applications are subject to the most up to date design criteria held by the LLFA.

8) Prior to any works above DPC level a Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority in accordance with the recommendations set out in the submitted Preliminary Ecological Appraisal (James Blake Associates, September 2022).

The works shall be implemented in accordance with the approved details in accordance with a timetable to be agreed as part of the strategy.

9) Prior to construction above ground floor slab level of any building, details of external facing materials relating to that building shall be submitted to and approved in writing by the Local Planning Authority and thereafter constructed in accordance with the approved details.

10) Prior to first occupation of the development, full details and specifications of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. These landscaping details shall include the layout of the hard landscaped areas with the materials and finishes to be used together with details of the means of enclosure, car parking layout, vehicle and pedestrian accesses. All of the hedgerow boundaries not required to be removed to allow for site access shall be retained and maintained at all times thereafter, unless otherwise agreed with the Local Planning Authority. The details of the soft landscape works shall include schedules of shrubs and trees to be planted, noting the species, stock size, proposed numbers / densities and details of the planting scheme's implementation, aftercare and maintenance programme. The hard landscape works shall include the height, design and materials for the treatment of all gates, fences, walls, railings and other boundary treatments. The hard landscape works shall be carried out as approved prior to the occupation of the properties they would serve.

The soft landscape works shall be commenced as approved within the first available planting season (October to March inclusive) following the commencement of the development, and shall be carried out in accordance with a programme of planting to be agreed in writing by the Local Planning Authority pursuant to this condition.

If within a period of five years from the date of the planting of any tree or plant, or any tree or plant planted in its replacement, is removed, destroyed, dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the

same place, unless the Local Planning Authority gives its written consent to any variation.

11) Prior to the first occupation of the western parcel of development, details of the means of access shall be submitted for the approval of the Local Planning Authority, and the approved works shall be completed. The details shall be in accordance with the principles shown on Ingent drawing no. 2207-709 SK100D. The access shall be retained for the lifetime of the development.

12) Prior to the first occupation of the eastern parcel of development, details of the means of access shall be submitted for the approval of the Local Planning Authority, and the approved works shall be completed. The details shall be in accordance with the principles shown on Ingent drawing no. 2207-709 SK101D. The access shall be retained for the lifetime of the development.

13) Prior to the first occupation of the development the developer shall implement a pair of dropped kerb crossing points, with tactile paving across Walden House Road, to the western side of the junction with Catchpole Lane.

14) Prior to the first occupation of the development the applicant shall submit details for approval in writing by the Local Planning Authority, for the provision of a pedestrian/cycle access to the south of the site onto Catchpole Lane, to include, but not limited to, the following:

- Suitable visibility splays clear to ground level
- Appropriate arrangements to facilitate access for pedestrians and cycles in and out of the site
- Provision of a pair of dropped kerb crossing points, with tactile paving, across Catchpole Lane.

The approved scheme shall be fully implemented prior to the first occupation of the development.

15) Details for the improvement of the bus stops on Catchpole Lane shall be submitted for the approval of the Local Planning Authority, and the approved details shall be implemented prior to the first occupation of the development. The works shall include the following;

- Provision of raised kerbs with pole and flag with timetable, on the western side of Catchpole Lane, northbound, within the vicinity of the existing 'The Paddocks' stop, on the southbound side;
- Provision of raised kerbs and a timetable for the existing 'Catchpole Lane' bus stop on the southern side of Catchpole Lane for southbound buses; and
- Provision of a pair of dropped kerb crossing points, with tactile paving, across Catchpole Lane within the vicinity of the southern pedestrian/cycle access.

The approved scheme shall then be fully implemented prior to the first occupation of the development.

16) Prior to the first occupation of the development a maintenance plan detailing the maintenance arrangements including who is responsible for different elements of the

surface water drainage system and the maintenance activities/frequencies, shall be submitted to and agreed, in writing, by the Local Planning Authority. Maintenance should be carried out in line with the agreed arrangements for the lifetime of the development.

17) Prior to occupation of any of the dwellings hereby approved a lighting design scheme for biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting plans, drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the Local Planning Authority.

18) Prior to the first occupation of any dwelling, the foul drainage for that building must be connected to mains drainage.

19) The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

20) All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (James Blake Associates, September 2022).

21) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to the Local Planning Authority for approval in writing. These approved schemes shall be carried out before the development is resumed or continued. Following completion of measures identified in the approved remediation scheme, a verification report demonstrating the effectiveness of the remediation scheme carried out must be submitted to the Local Planning Authority for approval in writing.

The work shall be undertaken by a competent person in accordance with the Essex Contaminated Land Consortium's Land Contamination Technical Guidance for Applicants and Developers and the Environment Agency's 'Land Contamination Risk Management' guidance.

APPEARANCES

FOR THE APPELLANT:

Kevin Coleman - Phase 2 Planning

James Blake – James Blake Associates

Anthony Furness - James Blake Associates

Stuart Cock - (Mersea Homes)

Fergus Cock - (Mersea Homes)

Andrew Marvin - (Landowner)

FOR THE LOCAL PLANNING AUTHORITY:

Patrick Daly (Maldon Borough Council)

Bobby Browne (Wynne-Williams Associates)

DOCUMENTS SUBMITTED AT HEARING

Council further response to costs application



Costs Decision

Hearing held on 3 April 2025

Site visit made on 3 April 2025

by T Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2025

Costs application in relation to Appeal Ref: APP/X1545/W/24/3338556 Land at Manor Farm, Walden House Road, Great Totham Easting (x) 585350 Northing (y) 211900

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mersea Homes Ltd for a partial award of costs against Maldon District Council.
 - The appeal was against the refusal of planning permission for up to 49 new residential properties with all associated access, servicing, parking, landscaping, open space, drainage, utilities and associated infrastructure.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The first part of the costs claim relates to the submission of landscape evidence from the Council which the claimant states deviates from the Council's Statement of Case, and which it is suggested introduces issues of methodology and substance in terms of alleged landscape impacts not raised by the Council in the officer's report or decision notice.
4. It is clear from the officers report and decision notice that the Council had concern relating to the landscape impacts of the scheme. This will have been recognised by the appellant early in the appeal process given the statement of case on landscape and visual matters that was submitted. An LVA was earlier submitted with the planning application.
5. I accept that the Council stated within their appeal statement that they did not consider it necessary to respond to the appellant's Statement of Case on Landscape and Visual Matters or make any further comments on the LVA. However, that appeared to change and a Landscape Hearing Statement appears to have been submitted and accepted prior to one of the previously arranged and since cancelled Hearings.
6. The claimant states that the submission of this evidence has resulted in unnecessary or wasted expense in the appeal. However, whilst noting the timing of

the Council's submission, the preparation of more detailed landscape evidence on the basis of the Council's reason for refusal would not be an unexpected part of the appeal process given the substance of concerns of the Council and the submission by the appellant of a dedicated statement of case on landscape and visual matters.

7. Therefore, in relation to this matter, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.
8. The second part of the claim relates to concerns that the Council has not reviewed its case following on from changes over the period of time which meant that the Council can no longer demonstrate a five year housing land supply. However, those changes would not automatically mean that the Council would have to alter its position on the appeal or cease to defend the appeal. I note that other reasons for refusal were withdrawn once the Council no longer had concern over those issues.
9. I also note other appeal examples where the Council chose not to defend previous planning refusals relating to issues around those matters. However, there is nothing to indicate that those appeal sites shared identical circumstances. In spite of my conclusions outlined within the Decision Letter and whilst I note that the Council could have been clearer and more certain in its response to this second part of the costs claim which was put forward at the Hearing, I cannot come to the conclusion that it was unreasonable for the Council to choose to defend this particular case.
10. Therefore, in relation to this matter, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

T Burnham

INSPECTOR