



Appeal Decision

Site visit made on 15 November 2022

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2023

Appeal Ref: APP/X1545/W/21/3285300

Knightswood Centre, Steeple Road, Southminster CM0 7BD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by MSN Ventures Ltd against the decision of Maldon District Council.
 - The application Ref FUL/MAL/20/01344, dated 23 December 2020, was refused by notice dated 31 August 2021.
 - The development proposed is conversion of 2 existing buildings (previous use class C2) into 11 flats and 2 maisonettes and the construction of 3 new bungalows to the rear.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of 2 existing buildings (previous use class C2) into 11 flats and 2 maisonettes and the construction of 3 bungalows to the rear at Knightswood Centre, Steeple Road, Southminster, CM0 7BD in accordance with the terms of the application, Ref FUL/MAL/20/01344, dated 23 December 2020, subject to the conditions set out in the schedule below.

Preliminary Matter

2. The appellant has submitted an agreement with the appeal under Section 106 of the Town and Country Planning Act 1990, dated 14 April 2022 (the S106). I have taken this into account in my assessment of the appeal.

Main Issues

3. The main issues are:
 - the effect of the development proposed on the character and appearance of the area, and;
 - the effects of the development proposed on local infrastructure.

Reasons

Character and Appearance

4. The appeal site lies among a cluster of buildings which surround a crook in the line of Steeple Road, and which are in a distinctly rural setting. The surrounding area comprises open grassland and fields, and the denser pattern of development surrounding Southminster exists further to the south.
5. Other buildings within this cluster are of varying scale, form and design. Knightswood Court to the south is a retirement housing development

- comprising both single storey and two storey buildings, set among landscaped gardens and parking areas.
6. The appeal site is set on high ground and the land to the north slopes gently downwards, exposing the northern elevations of the existing buildings on the site to long views over the farmland to the north. The existing buildings on the site have undergone extensions and alterations associated with their former use and parts of the buildings consequently display a utilitarian appearance, for example through external metal staircases, fire escapes and vents to the elevations. The site is in a generally dilapidated condition as a result of its vacancy since 2017.
 7. The main brick buildings are set towards the centre of the site, behind an existing car park to the front. By contrast, the rear of the site has a more open and verdant character, created by the open garden area and smaller, timber clad outbuildings. This contributes to the gentle transition into the open countryside beyond.
 8. The new bungalows proposed at the back of the site, by reason of their footprint and width across the plot, would result in the loss of the open and verdant character at the back of the site and the loss of the transition to the open countryside beyond. While the most northern bungalow would replace an existing outbuilding, the treatment of the side elevation, which would be visible from the north, would be more domestic in its character. This would accentuate the presence of the residential accommodation at the back of the site in those long views, and would appear as encroachment of the development into the countryside.
 9. The appeal scheme would see the introduction of paraphernalia across the site, associated with its residential use. This would include two parking areas, detached cycle and refuse stores, and formal landscaping including boundary treatments within the site. However, these features are not uncommon among this cluster of buildings. Similar sized parking areas can be seen around other buildings within the immediate vicinity of the site, as can landscaping and garden features among the grounds. The bin and cycle stores would be appropriately scaled and include materials to integrate with the character of the existing buildings. While they would be visible in views from the north, they would appear as part of the cluster of existing buildings and would not appear prominent or visually intrusive. Overall, I find these additional features would not appear incongruous or at odds with the character of the surrounding area.
 10. The introduction of a communal garden to the front of the building, close to the road, may experience some visibility through the proposed landscaping to the front boundary. However, given the presence of other landscaped gardens close to the street on the nearby sites, I do not find this garden area would cause visual harm.
 11. The existing buildings would also experience changes to their facades which would result in those buildings having a more domestic appearance, including alterations to doors and windows. New balconies would be installed to the south facing elevation of the main building, however, these would be set back from the road and positioned in a recessed part of the building. As such they would not appear visually prominent.

12. In addition, the package of works proposed to the main brick buildings includes a number of alterations which would notably improve their appearance and reinstate some of their original character. This includes reinstatement of windows and removal of external items including access ramps, railings and the prominent external staircase on the north facing elevation. The alterations to the main building would also remove its physical attachment to the neighbouring building to the south, reinstating the appearance of a detached building and establishing a feeling of space between the plots.
13. Insofar as this main issue is concerned, I find that the proposed development would be compliant with the development plan with the exception of the bungalow development at the back of the site, which would cause some harm to the character and appearance of the area. This part of the development would conflict with policies D1 and H4 of the Maldon District Approved Local Development Plan (LDP) which require, among other things, that development respects and enhances the character and local context and setting. It would also conflict with Policy S8 of the LDP which seeks to protect the countryside for attributes including its landscape, intrinsic character and beauty.
14. This part of the proposals would also conflict with the objectives of the National Planning Policy Framework (the Framework) at paragraph 130, insofar as it requires development to be sympathetic to local character, including surrounding landscape setting.

Infrastructure

15. Policy I1 of the LDP requires developers to contribute towards local and strategic infrastructure and services necessary to support the proposed development. It states that a S106 contribution may be agreed to mitigate those impacts upon the local area.
16. I have considered the S106 in light of the Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 57 of the Framework, which set out the tests for planning obligations. The obligations contained in the S106 relate to the following matters:
 17. Health Care Financial Contribution: Through increasing the number of homes on the site, the appeal scheme would increase demand on local health services. As part of the appeal, the NHS have commented that the local medical centre does not have capacity for the additional growth resulting from the development and is already below the recognised standards of provision. It has been adequately demonstrated, therefore, that mitigation for the impact of the development is necessary. The extent of the financial contribution has been calculated based on the additional population growth and floorspace requirements, and this demonstrates the contribution of £7,800 is fairly and reasonably related in scale and kind to the development. As such, the contribution meets the tests for a planning obligation, and the sum would be secured by the S106.
 18. Affordable Housing Contribution: The Council accept in its committee report, that the appeal scheme could not make a contribution to affordable housing as this would render the scheme unviable. While this information is not before me, the Council had the scheme's viability independently reviewed and this matter is not in dispute between the main parties. Policy H1 of the LDP allows for

relaxation of the affordable housing requirement where the Council is satisfied it would render the development unviable.

19. The S106 includes a review mechanism for affordable housing provision to be reassessed during the course of the development, and inclusion of the neighbouring site in any affordable housing contribution should it be brought forward for redevelopment in the near future. However, I do not have evidence before me of a policy nor other reason that would make this necessary to make the appeal scheme acceptable in planning terms. While I appreciate the Council's concerns that the appellant may also, in the future, seek to develop the neighbouring site, I do not have substantive evidence relating to this likelihood nor a policy basis on which to include the neighbouring site within the review. As such, I am not satisfied that this requirement meets the relevant tests for an obligation.
20. Legal fee and monitoring fee: Similarly there is no evidence before me as to how the legal and monitoring fees have been calculated and I cannot be satisfied that they are fairly and reasonably related in scale and kind to the proposed development. Consequently, based on the evidence, they would not meet the required tests.
21. The Council state that the development could impact on education infrastructure, given the sizes of the units proposed. Mitigation towards education does not form part of the S106. However, the effects of the proposed development on existing education infrastructure have not been demonstrated and there is insufficient evidence to suggest that a contribution is required in order to make the development acceptable in planning terms. As such, I do not find that mitigation for education impacts would be necessary.
22. Taking the above matters into consideration, since the obligations relating to affordable housing and the Council's legal and monitoring fees fail to meet one or more of the tests set out in the CIL Regulation 122, I am unable to take them into account in determining the appeal. However, I am satisfied that the health care contribution meets the tests. This contribution complies with Policy 11 of the LDP through supporting relevant infrastructure.

Other Matters

23. The appeal site lies within the recreational 'zone of influence' for a number of Special Protection Areas (SPAs), Special Areas of Conservation (SAC) and Ramsar sites along the Essex Coast. This includes Essex Estuaries SAC, Blackwater Estuary SPA and Ramsar site, Dengie SPA and Ramsar site, and; Crouch and Roach Estuaries SPA and Ramsar site. These are sites designated under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
24. Adopting a precautionary approach, the proposed new residential development would have a likely significant effect on the qualifying features of those designated sites through increased recreational pressures from new residents, either alone or in combination with other plans. As such, an appropriate assessment is required under the Habitats Regulations.
25. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy 2020 (RAMS) is a strategic approach which identifies measures to avoid and mitigate for the adverse effects on the integrity of the sites from recreational

disturbance in combination with other plans and projects. The RAMS details the need for mitigation from new residential developments within the zone of influence in the form of a tariff per dwelling. It goes on to detail how this relates to a strategic full mitigation package until 2038 and the specific measures and their costs. On this basis I am satisfied that such a contribution would avoid adverse effects on the protected sites.

26. The main parties agree that the required contribution, plus an associated monitoring fee, has already been paid to the Council and the Council has confirmed that it considers the adverse impacts have been mitigated. I have no reason to doubt that the contribution would be spent for the intended purpose. Consequently, I am satisfied that the development would avoid an adverse impact on the designated sites.
27. I do not have evidence of a planning reason for the appellant to demonstrate marketing of the site for community purposes. While the local roads lack a footpath link to Southminster, in light of the site's proximity to that settlement, in combination with the bus route outside the site, I do not consider the site to be in an unsustainable location, nor isolated for the purposes of the Framework. While there would likely be an increase in traffic movements, I do not have strong evidence that the residual cumulative impacts on the road network would be severe nor that there would be an unacceptable impact on highway safety. In line with paragraph 111 of the Framework, the development should not, therefore, be prevented on highways grounds.

Planning Balance

28. In terms of the main issues before me, the bungalows would cause harm to the character and appearance of the area through the encroachment of development into the open space at the back of the site. The effects would be long lasting and would be in conflict with the development plan and the Framework. To this harm I ascribe significant weight.
29. The proposed development would make a notable contribution to the Council's housing stock, as well as making a positive contribution to the national objective to boost the supply of homes. This weighs in favour of the development, particularly given the significant shortfall in the Council's housing land supply. The main parties agree this to be a brownfield site and consequently its reuse meets the objectives of paragraph 119 of the Framework relating to efficient use of land. The proposed new homes would vary in their size, including a mix of 1, 2 and 3 bedroom units, for which the Council has an identified need and which would meet the objectives of the Framework to deliver housing for different groups of the community. The homes would be in a reasonably sustainable location, as a bus service operates from outside the site, and is in close proximity to the settlement to the south.
30. In addition, the site is one which paragraph 69 of the Framework acknowledges can make an important contribution to meeting the housing requirement of an area, and can often be built out quickly. Taken together, for these reasons the proposed provision of housing is given significant weight.
31. As above, the proposal would provide other benefits to the character and appearance of the existing buildings on the site, and these are given moderate weight. In addition, the development would bring economic benefits in terms of construction jobs and ongoing local expenditure by new residents. Taken

together, and in light of the scale of the proposal, these attributes attract moderate weight.

32. The Council accepts that it does not have a five year land supply for housing and states it currently has a 2.9 year supply. As such, the provisions of paragraph 11 of the Framework are applicable to the appeal. The most important policies are deemed to be out of date and planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
33. For the reasons given above, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits. As such the presumption in favour of sustainable development applies and paragraph 11d) of the Framework states that planning permission should be granted. This is a material consideration of sufficient weight that planning permission should be granted notwithstanding the conflict with the development plan.

Conditions

34. I have considered the conditions put forward by the Council and I have had regard to the advice in Planning Practice Guidance and the Framework in respect of conditions. In addition to the time limit, I have imposed a condition requiring the development to adhere to the submitted drawings to provide clarity for the parties.
35. To ensure the site is made safe for future users, conditions are required in respect of land contamination. These need to be satisfied prior to commencement to ensure that the land is made safe before the works commence. For visual reasons, a condition is also required to ensure tree protection measures are installed. These should similarly be installed prior to the commencement of development to protect those trees from damage for the duration of the works. To ensure appropriate protections for biodiversity, ecological mitigation measures should also be secured prior to the commencement of development.
36. To protect the character of the main buildings and the area, conditions are necessary to ensure the use of appropriate materials, secure details of boundary treatments across the site and a scheme of soft landscaping and replacement of that planting where necessary. Details of hard surfaces across the site are also necessary for visual reasons and to safeguard highway safety.
37. To avoid the risk of flooding, details of surface water drainage systems and their maintenance are necessary. I do not however find that a requirement for yearly logs of maintenance of those systems meets the test of necessity or reasonableness. For environmental reasons conditions are necessary relating to ecological mitigation and enhancements, as well as external lighting across the site.
38. To protect the living conditions of nearby residents, and for environmental and highway safety reasons, a construction method and management plan is conditioned. To safeguard highway safety, conditions are imposed relating to delivery of the cycle and refuse storage facilities, the amended site accesses insofar as they lie within the application site, and delivery of parking and

turning areas shown within the submitted documents. To encourage the use of sustainable transport, a condition is imposed to ensure Travel Information Packs are issued to new residents.

39. Given the degree of mutual overlooking likely between some parts of the development, and as the windows which the Council suggests should be obscure glazed are secondary windows to the rooms they serve, I do not consider it is necessary to condition them as such. As the ground levels across the site are predominantly flat, particularly where new development is proposed at the back of the site, I do not find it necessary to condition ground levels further.
40. In the absence of evidence as to why the existing vehicular access should be removed, I do not find a condition securing its removal to meet the test of necessity.

Conclusion

41. For the above reasons, while I have identified conflict with the development plan, the approach in the Framework, along with all other relevant material considerations, indicate that planning permission should be granted. As such, the appeal is allowed.

C Shearing

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
001.00 (Site Location Plan), 002.00 (Site Block Plan), 005.00 (Existing Floor Plans), 006.00 (Existing Elevations), 007.00 (Existing Floor Plans), 008.00 (Existing Elevations), 009.00 (Existing Plans and Elevations), TP-001 (Topographical Site Plan), 300.00 (Site Layout Plan), 300.01 (Site Layout Plan), 301.01 (Proposed Floor Plans), 302.00 (Proposed Elevations), 303.00 (Proposed Floor Plans), 304.00 (Proposed Elevations), 305.01 (Proposed Plan and Elevations), 306.01 (Proposed Plan and Elevations), 307.00 (Proposed Plan and Elevations), 308.01 (Cycle/ Refuse Stores), 310.00 (Site Layout Plan).
- 3) No development shall take place, including any demolition or site clearance, until a Construction Method Statement and Management Plan has been submitted to and approved in writing by the local planning authority. This shall demonstrate: areas for parking of vehicles, areas of loading and unloading of plant and materials, storage of materials, wheel washing facilities, disposal of waste material, control of dust emissions, working hours, location and duration of noisy activities and measures to prevent pollution of ground and surface waters during construction. The development shall be carried out in accordance with the approved details.

- 4) Prior to the commencement of development on the site, tree protection measures shall be installed in full accordance with those detailed in the 'Arboricultural Impact Assessment Report' by Sharon Hosegood Associates, dated November 2020. All protection measures shall be maintained in accordance with those details throughout the duration of the demolition and construction periods.
- 5) No development shall take place, including any demolition or site clearance, until details of an ecological mitigation scheme have been submitted to and approved in writing by the local planning authority. This shall be based on up to date ecological surveys and include details of implementation timing, phasing and maintenance. The development shall be carried out only in accordance with the approved details.
- 6) No development shall be carried out (other than demolition, site clearance, removal of underground tanks and old structures) until a site investigation and risk assessment report has been carried out and submitted to and approved in writing by the local planning authority. The report findings shall include:
 - A survey of the extent, scale and nature of any contamination,
 - An assessment of the potential risks to human health, property including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface water, ecological systems, archaeological sites and ancient monuments;
 - An appraisal of remediation options, and the proposal of the preferred option(s).
- 7) No development shall be carried out (other than demolition, site clearance, removal of underground tanks and old structures) until details of a remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment, have been submitted to and approved in writing by the local planning authority. The details shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site will not qualify as contaminated under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of land after remediation. The development shall be carried out in accordance with the approved details.
- 8) Following the completion of measures identified in the approved remediation scheme, and prior to the first occupation of any part of the site, a verification report shall be submitted to and approved in writing by the local planning authority to demonstrate the effectiveness of the remediation carried out.
- 9) Any contamination that is found during the course of construction 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 and approved in writing by the local planning authority. These

approved schemes shall be carried out before the development is resumed or continued.

- 10) No development (other than demolition and site clearance) 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 development, have been submitted to and approved in writing by the local planning authority. Those details should include but not be limited to:
- verification of the sustainability of infiltration of surface water for the development, based on appropriate testing;
 - limiting discharge rates to 1.3l/s for all storm events up to and including the 1 in 100 year plus 40% allowance for climate change storm event subject to agreement with the relevant third party;
 - details of relevant permissions to discharge from the site into any outfall;
 - final modelling and calculations for all areas of the drainage system including engineering drawings;
 - drainage plans showing exceedance and conveyance routes, FFL and ground levels, and location and sizing of drainage features, and;
 - details of maintenance arrangements.

The development shall be carried out in accordance with the approved details.

- 11) Development shall not commence on the construction of the new bungalows (annotated as plots 14, 15 and 16 on drawing 300.00) until details of the external materials and finishes of those buildings have 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.
- 12) Development shall not commence on the conversion of the existing buildings (annotated as plots 1-11, 12 and 13 on drawing 300.00) until details of external materials and finishes to be used on those buildings have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved details.
- 13) Prior to the first occupation of any part of the site, details of boundary treatments to be used across the site shall be submitted to and approved in writing by the local planning authority. If any gates are to be provided to the vehicular access, the details shall show them to be inward opening and set back from the highway boundary. The development shall be carried out in accordance with the approved details.
- 14) Prior to the first occupation of any part of the site, a scheme of soft landscaping for the site shall be submitted to and approved in writing by the local planning authority, with a timetable for its implementation. The development shall be carried out in accordance with the approved details and timetable.
- 15) If within a period of five years from their date of their planting any tree or plant (or its replacement) forming part of the approved landscaping

- scheme, is removed, destroyed, dies or becomes seriously damaged or defective, another tree or plant of the same size and species shall be placed in the same position.
- 16) Prior to the first occupation of any part of the development, details of hard landscaping across the site, including parking areas and accesses, shall be submitted to and approved in writing by the local planning authority. The details shall include the use of a bound surface to the vehicular access within 6m of the highway boundary. The development shall be carried out in accordance with the approved details.
 - 17) Prior to the first occupation of any part of the site, all parking areas and turning areas as shown on plan 2006930-001C (Internal Layout and Vehicle Tracking) contained within the Transport Statement by Ardent Consulting Engineers dated 2020, shall be completed and available for use. Those areas shall remain available for these purposes at all times.
 - 18) Prior to the first occupation of any part of the site, the site access shall be installed in accordance with the details shown on plan 1006930-001 (Access Plan) contained within the Transport Statement by Ardent Consulting Engineers dated December 2020.
 - 19) Notwithstanding the approved plans, prior to any occupation of the development, visibility splays from the northern access (insofar as they relate to the land within the red line of the site) shall be provided with visibility splays of 2.4m by 132m to the north and 2.4m by 49m to the south, taken from its centre line and measured along the nearside edge of the carriageway. Those splays shall be maintained free of obstruction at all times.
 - 20) Prior to the first occupation of any part of the site, all cycle parking and refuse storage facilities shall be installed in accordance with the approved plans. They shall remain available for use at all times.
 - 21) Prior to the first occupation of any part of the site, details of a Residential Travel Information Pack shall be submitted to and approved in writing by the local planning authority. This shall include six one-day travel vouchers for use with the relevant public transport operator. Prior to the first occupation of each residential unit in turn, the occupants shall be issued with such a Pack, in accordance with the approved details.
 - 22) Prior to the first occupation of any part of the development, details of ecological enhancements for the site, including measures for birds and bats, shall be submitted to and approved in writing by the local planning authority. Those approved enhancements shall be installed in accordance with the approved details within six months of their approval in writing and shall be so maintained.
 - 23) No external lighting shall be installed within the site unless details have first been submitted to and approved in writing by the local planning authority. The external lighting shall be installed only in accordance with the approved details.

End of Schedule