
Appeal Decision

Hearing held on 23 February 2016 & 21 June 2016

Site visit made on 23 February 2016

by Richard McCoy BSc MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 September 2016

Appeal Ref: APP/X1545/W/15/3130915

Warren Golf Club, Herbage Park Road, Woodham Walter, Essex CM9 6RW

- 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 Mr M Manning against the decision of Maldon District Council.
 - The application Ref FUL/MAL/00047, dated 22 January 2015, was refused by notice dated 23 July 2015.
 - The development proposed is a residential development comprising 11 dwellings.
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Procedural matters

1. A signed and dated S106 Unilateral Undertaking was submitted by the appellant. This covers contributions towards education provision and the off-site provision of affordable housing units. I return to these matters below.
2. On 6 March 2016 the Secretary of State for Communities and Local Government issued a letter stating that arrangements would proceed for the examination of the Maldon District Local Development Plan (LDP). However, no evidence has been adduced to demonstrate that the Examining Inspector has issued a report which concludes that any particular LDP policy is sound. Moreover, the Examining Inspector has made it clear that housing is a subject on which a further update and clarifications are to be sought. As a result, I give the emerging LDP policies limited weight.

Decision

3. I dismiss the appeal.

Applications for costs

4. At the Hearing applications for costs were made by Mr M Manning against Maldon District Council and by Maldon District Council against Mr M Manning. These applications are the subject of separate Decisions.

Main Issues

5. The main issues are;
 - a. the effect of the proposal on the setting of nearby heritage assets,
 - b. the effect on the character and appearance of the area, and
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- c. whether this would be a sustainable form of development having regard to national and development plan policies in respect of the delivery of new housing, including affordable housing.

Reasons

6. The Warren Estate consists of 2 no. golf courses, 2 no. listed buildings, holiday park lodges, large woodland areas and associated recreational facilities. It is in new ownership having gone into administration in 2011. The appeal site forms a curvilinear strip of land within the Warren Estate, on its north eastern edge. It stands close to existing holiday lodges. Vehicle access is available to the east (at the junction of Church Hill/Herbage Park Road) and south (through the estate to its main entrance on Herbage Park Road). Also to the east is a dwelling known as Whitegates which fronts onto Herbage Park Road.
7. The appeal site is bounded to the north by woodland and public playing fields (referred to variously by the parties as Bell Common, Bell Meadow and the village green - the title I shall adopt in the remainder of this decision) and to the south by open scrubland which slopes down towards the holiday lodges. It is presently open, uncultivated rough grassland/scrub and is situated outwith the development boundary of Woodham Walter, within the designated Special Landscape Area.
8. Proposed is the erection of 11 no. dwellings with adjoining garages, together with off street parking and private amenity space. As a linear development, all of the dwellings would face north onto an existing access track with private amenity space to the rear. Three house types are proposed; Plots 1 and 8 – 11 would be 2 storey, 4 bed detached dwellings, Plots 2 – 5, would comprise 2 pairs of 3 bed semi-detached handed dwellings while Plots 6 and 7 would be 2 storey 3 bed detached dwellings. The external elevations would be finished in a mix of brick, render and clay tile roofs.

Effect on the setting of nearby heritage assets

9. The National Planning Policy Framework (NPPF) defines the setting of a heritage asset as the surroundings in which it is experienced. The extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset; may affect the ability to appreciate that significance; or, may be neutral. The NPPF makes clear that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight attaches to the asset's conservation; the more important the asset, the greater that weight should be. Significance can be harmed through development within an asset's setting.
10. Historic England guidance; *The Setting of Heritage Assets*, indicates that setting embraces all of the surroundings from which an asset can be experienced or that can be experienced from or within the asset. Setting does not have a fixed boundary and cannot be defined, in perpetuity, as a spatially bounded area or as lying within a set distance of a heritage asset.
11. The significance of a heritage asset is defined in the NPPF as its value to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.

Significance may be harmed by a development and it is necessary to determine the degree of harm that may be caused.

12. I agree with the parties that the heritage assets that would be affected by this proposal as a development within their settings would be the Grade II* listed Church of St Michael and the row of buildings containing the Bell Inn and Wingtons (both Grade II listed). The fabric of these heritage assets would remain untouched by the proposal and from what I observed that is where the majority of their significance rests. St Michael's Church is located to the east of the proposal. It exerts a commanding presence over the surrounding landscape which includes the appeal site and from which the asset gains part of its significance. While inter-visibility is restricted by vegetation, it would be seen in conjunction with the proposal from Little Baddow Road and Church Hill. As such the proposal would harmfully detract from the significance of the heritage asset as a development within its setting.
13. In respect of the Bell Inn and Wingtons, these buildings stand at a lower level to the appeal site, opposite the village green. This provides the listed buildings with an open aspect, including views to the appeal site and across to the church. As such it forms part of their settings and contributes to their significance. The proposed houses would be prominently located close to the top of the village green. Notwithstanding the existing, intervening line of trees, I consider that within this context they would have a harmful impact on the significance of the heritage assets as a development within their settings.
14. With regard to the degree of harm, the Planning Practice Guidance (PPG) sets out that "substantial harm" is a high test and goes on to note that in terms of assessing proposals affecting listed buildings, the key question is whether the adverse impact seriously affects a key element of their special architectural and historic interest. In this case, the significance of the listed buildings encompasses their historic, evidential and aesthetic values, the majority of which derives from their historic fabric which would be unaffected by the proposal. Consequently, I consider that the harm arising to the significance of these heritage assets, would be less than substantial.
15. I note that the appellant considered that there would be no harm arising from the proposal in respect of Bell Inn and Wingtons, and revised his position in respect of the church from that of less than substantial harm, to no harm arising. Nevertheless, for the reasons stated above I consider that less than substantial harm would occur. In this regard, my attention was drawn to saved Policy BE16 of the adopted Maldon District Replacement Local Plan (LP) but as it refers to additional buildings within the curtilage of a listed building, I do not consider it to be strictly relevant. However, under NPPF paragraph 134 this harm should be weighed against any public benefits of the proposal, including securing the assets' optimum viable use. This is a matter to which I return below.

Character and appearance

16. Saved LP Policy BE1 states that development will only be permitted if it is compatible with the surroundings and/or improves the surrounding location in terms of *inter alia*; site coverage, scale, bulk and height, and visual impact. In addition, the policy requires that outside defined development boundaries, development proposals should make a positive contribution to the landscape and open countryside.

17. The proposal would be located beyond the village, within a visually prominent location at the top of a ridge. The proposed 2 storey dwellings would be very prominent features resulting in a stark urban intrusion that would detract from the tranquil, rural character of the area. They would exert a strong physical presence over the village green and the public footpath which passes the appeal site to the north.
18. Notwithstanding existing vegetation, the topography of the land is such that the proposed built form would be visible from longer views within the landscape and would be likely to result in inherently domestic paraphernalia also being visible within longer range views of the site. The stark visual contrast between the proposal and its rural context would significantly alter the area's character and appearance, resulting in visual harm. Accordingly, the proposal would conflict with saved LP Policies BE1, CC6 and CC7 which seek to protect the landscape and the Special Landscape Area.

Housing land supply and sustainable development

19. The parties disputed whether or not the Council could demonstrate an up-to-date 5 year supply of housing land. The Council estimated its supply, based on its recently published *Five Year Housing Land Supply* document to be 5.35 years. The Council was also satisfied that recent appeal decisions in the District had shown there to be a 5 year supply of deliverable housing land. The appellant disagreed arguing that the saved policies of the LP are out-of-date and the emerging housing policies carry little weight. The appellant therefore estimated the likely supply to be around 4.86 years.
20. A lack of a 5 year supply would mean that relevant development plan policies could not be considered to be up-to-date and would engage NPPF paragraphs 49 and 14. However, in this case I have found that the proposal would cause less than substantial harm as a development within the setting of designated heritage assets. In considering the relationship between the balancing exercises under NPPF paragraphs 14 and 134, a recent high court judgement (*Forest of Dean v SoS & Galdman* [2016] EWHC 421) makes it clear that for the purposes of the 2nd bullet point of paragraph 14 "decision-taking" (which addresses the circumstances where relevant policies of the development plan are out-of-date whether due their lack of consistency with the NPPF and/or due to a failure to demonstrate a deliverable supply of housing land) paragraph 134 may be a specific policy which indicates that development should be restricted. The balancing exercise under paragraph 134 therefore requires to be carried out to determine if the harm is outweighed by any public benefits.

Other matters

21. I note from the officer report to Committee that it was considered that, subject to conditions that could be attached to any grant of planning permission, the proposal would not be harmful in terms of its effect on the living conditions of the occupiers of nearby dwellings and future occupiers of the proposal, highway safety, flood risk, drainage and land contamination. From my assessment, I have no reason to disagree. Furthermore, I am satisfied on the basis of the submitted Extended Phase 1 Ecology Report that subject to conditions that could be attached to any grant of planning permission, the proposal would not be harmful to any ecological interests.

22. The appellant argued that the scheme was necessary as an enabling development to fund the ongoing repair and upkeep of 2 no. Grade II listed barns which form the Clubhouse. The Historic England (HE) document; *Enabling Development and the Conservation of Significant Places*, offers specific guidance and criteria to be used in the assessment of enabling development proposals. However, while the HE criteria set out the tests of 'decisively' outweighing disbenefits, NPPF paragraph 140 makes it clear that the benefits of an enabling development proposal should simply outweigh the disbenefits of departing from other policies. Given the status and up-to-date nature of the NPPF, and in the absence of any specific development plan policy on this matter, I shall apply its test in this case.
23. From what I observed, the condition of the listed buildings was such that they did not appear to be at risk from disrepair, neither was it claimed that they appear on the HE *Building at Risk Register*. Furthermore, from the evidence, I am unable to conclude that an enabling development would be the only means of securing the future of these heritage assets based on the costs of repair being significantly greater than their market value upon repair, or that a conservation deficit was likely to exist.
24. In addition, I am unable to conclude from the submitted evidence that the proposed enabling development represents the minimum number of units required to repair the listed buildings to remove the claimed risk by consolidating their historic structure and fabric. Indeed a letter from the appellant dated 26 October 2015 describes the works as improvements, enhancements and maintenance projects in connection with the estate "diversifying into weddings and other outdoor pursuits".
25. Consequently, it has not been demonstrated that there is a pressing need for the repair and restoration of these listed buildings. However, even if that were the case, securing the future of a heritage asset, including by means of an enabling development, requires to be assessed under NPPF paragraph 140, in the light of the HE document. To this end, the HE Enabling document explains that before any enabling development is considered, active marketing for a minimum period of 6 months should normally be undertaken to try to secure a viable future use. In the absence of such a marketing exercise, it is unclear if a charitable body such as a Building Preservation Trust, would be interested in acquiring and restoring the buildings with potential grant funding from sources such as the Architectural Heritage Fund and the Heritage Lottery Fund.
26. In my judgement, the appellant's financial interest in protecting these assets is likely to safeguard the buildings from total loss at worst and at the very least ensure that they are maintained in accordance with statutory minimum requirements. I am therefore not satisfied (in the absence of evidence to demonstrate that the buildings are at risk from disrepair or that a marketing exercise has been undertaken) that it has been demonstrated that an enabling development would be the measure of last resort and the only means by which the future of these heritage assets may be safeguarded. Accordingly, under NPPF paragraph 140, it has not been shown that the claimed enabling development is necessary to secure the future conservation of these heritage assets or that the proposal would outweigh the disbenefits of departing from saved LP Policy BE1 insofar as the proposal would be located outside of a defined development boundary and would fail to make a positive contribution to the landscape and open countryside.

27. The appellant also argued that the proposal was crucial to the success of the Warren Estate. I heard that most of the planned projects, such as the range of recreation and leisure facilities set out in the Master Plan, are dependent upon funding being secured. It was argued that the funding is revenue based and can only be generated from the proposal. A viability assessment was initially submitted at the application stage then withdrawn for reasons of commercial confidentiality to be replaced by an Executive Summary. The full assessment was then submitted at the Hearing as updated by the Financial Viability Report prepared by Capital Business Strategies Ltd, April 2016.
28. This stated that under the Residual Land Value Model, bespoke, high quality housing was required to generate maximum commercial return. This meant the scheme would not generate sufficient surplus to support the provision of affordable housing. The report was assessed on behalf of the Council by KIFT Consulting resulting in the appellant agreeing that a surplus would arise and a contribution could be made to affordable housing provision.
29. The Executive Summary submitted at the application stage also provided information regarding the financial viability of the Warren Estate and described significant proposed refurbishments and developments, including a wedding, health and spa complex. Nevertheless, although this proposal would generate a developer's profit (part of which would make a contribution towards the provision of affordable housing) it has not been demonstrated that the claimed existing and ongoing viability challenges experienced by the business may only be remedied by the proposed housing development. In which case, this consideration would not outweigh the conflict with saved LP Policy BE1.
30. My attention was drawn to several previous appeal decisions and a grant of planning permission by the Council which are claimed to be similar to this appeal. However, I am not aware of the detailed considerations taken into account by those Inspectors. Furthermore, given the site specific circumstances in this instance, taking this appeal on its planning merits, I do not consider the cited appeal decisions and planning permission to be directly comparable.

NPPF paragraph 134 balance

31. The proposal would increase housing choice, including the provision of affordable housing, albeit at a level which the Council considers to be below that which would be required by policy, and would make a contribution to education provision. The appellant also claimed that the proposal would secure the future of 2 no. listed buildings and the commercial viability of a rural business.
32. However, as set out above, the proposal would not amount to enabling development for the purposes of NPPF paragraph 140 and it has not been demonstrated that it is the only means by which the viability of the business can be secured. In which case, I give these considerations little weight. Nevertheless, it is the case that the NPPF seeks to boost significantly the supply of housing and widen the choice of high quality homes, as well as secure economic growth. Against this background, I attach significant weight to these benefits.
33. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) states that special regard should be paid to the desirability of

preserving the settings of listed buildings, where those settings would be affected by proposed development. Applying section 66(1) of the Act in the manner required by the recent judgements is a matter to which I give considerable importance and weight.

34. Consequently, despite finding the harm to be less than substantial, the presumption against granting planning permission remains strong. It can be outweighed by material considerations if powerful enough to do so and while I give significant weight to the public benefits identified in this instance, I do not consider them to be sufficiently powerful to outweigh the less than substantial harm that I have identified. Accordingly, the proposal would conflict with NPPF paragraph 134.
35. Having applied the balance under NPPF paragraph 134 in respect of the setting of the heritage assets, I have found that the public benefits would not outweigh the less than substantial harm arising. This means that under limb 2 of the 2nd bullet of NPPF paragraph 14 "decision-taking", NPPF paragraph 134 is a specific policy in the Framework that indicates that development should be restricted. Therefore, whether or not a 5 year housing land supply can be demonstrated is not determinative in this appeal.

Conclusion

36. I have identified aggregated less than substantial harm to designated historic assets. In addition, I have identified significant harm to the character and appearance of the area, contrary to saved LP Policy BE1. Although the proposal would not be harmful in terms of those other matters identified in paragraph 21 above and would bring benefits of significant weight, I consider that these matters would not be sufficient to outweigh the totality of the harm, giving considerable weight to paying special regard to the desirability of preserving the settings of listed buildings, as reflected in paragraph 132 of the NPPF.
37. Therefore for the reasons set out above, I consider that the appeal should be dismissed.

Richard McCoy

Inspector

APPEARANCES

FOR THE APPELLANT:

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| Mr D Wallis BSC(Hons), DipEP, MRTPI | Team Leader, Smart Planning |
| Dr A Hirmis BA(Hons) | Principal, Business Strategies Ltd |
| Mr D Bryan | Finance Director, Warren Golf Club |

FOR THE LOCAL PLANNING AUTHORITY:

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| Ms H Baldwin BSc, MSc | Development Control Officer |
| Mr M Leigh BA(Hons), MA, MRTPI | Interim Development Manager |
| Mr G Sung MA, LRTPI | Planning Policy Officer |

INTERESTED PERSONS:

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| Mr P Warren | Chair, Woodham Walter Parish Council |
| Cllr H Bass | Ward Member |

DOCUMENTS

- 1 Appeal Decision ref. APP/X1545/W/15/3003795
- 2 Appeal Decision ref. APP/X1545/W/15/3003529
- 3 Malden District Council; Five Year Housing Land Supply; February 2016
- 4 Financial Viability Report, February 2016
- 5 Final Report, December 2014
- 6 Letter from Secretary of State dated 6 March 2016 in respect of the Local Development Plan
- 7 Financial Viability Report, April 2016
- 8 Financial Base Case Scenario
- 9 Letters from Examining Inspector in respect of the Local Development Plan
- 10 Council's Validation of the Financial Viability Report
- 11 Appellant's Summary Statement of Case
- 12 Council's letters of notification of the resumed Hearing
- 13 Signed and dated Unilateral Undertaking
- 14 Additional conditions

PLANS

- A Drawing No. EZH 4_003 Rev A