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## Appeal Decision

Site visit made on 23 July 2020

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State.

Decision date: Wednesday, 16 December 2020

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Appeal Ref: APP/X1545/W/20/3251106

Land between Chandlers and Creeksea Lane, Maldon Road, Burnham on Crouch, Essex

- 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 David Wilson Homes Eastern Counties against the decision of Maldon District Council.
  - The application Ref FUL/MAL/19/01257, dated 22 November 2019, was refused by notice dated 18 March 2020.
  - The development proposed is erection of 36 dwellings, with associated off-street parking, public open space and landscaping.
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### Decision

1. The appeal is allowed and planning permission granted for the erection of 36 dwellings, with associated off-street parking, public open space and landscaping at land between Chandlers and Creeksea Lane, Maldon Road, Burnham on Crouch, Essex, in accordance with application Ref: FUL/MAL/19/01257 dated 22 November 2019, and subject to the conditions set out in the schedule at appendix 1.

### Application for Costs

2. An application for costs was made by David Wilson Homes Eastern Counties against the decision of Maldon District Council. This application is subject to a separate decision.

### Procedural Matter

3. During the course of the appeal the appellant has submitted a completed unilateral undertaking pursuant to s106 of the Town and Country Planning Act 1990 (**s106 agreement**) in order to address the Council's concerns, set out in reason for refusal No 3.
4. The s106 agreement includes obligations in respect of affordable housing, to mitigate the effects of the development on sites protected under the Habitats Regulations, to secure the long-term maintenance of public open space within the site and a contribution towards education provision. I am satisfied that the form and drafting of the s106 agreement would achieve these objectives and meets the relevant legal requirements.
5. I shall consider the s106 agreement against the tests set out in paragraph 56 of the National Planning Policy Framework (the Framework) and Regulation 122 of the Community Infrastructure Regulations (CIL) as to whether they would be

necessary to make the development acceptable in planning terms, directly relate to the development and fairly and reasonably related in scale and kind to the development under the respective main issues below.

## Main Issues

6. The main issues are the effect of the proposal on:

- the character and appearance of the area, having particular regard to the impact of the development when viewed from within the site and from surrounding land;
- the living conditions of the future occupiers of the housing site, having particular regard to the density of the development, access to outdoor recreational areas and the provision of garages;
- the contribution of the delivery of affordable housing, including its compliance with the Nationally Described Space Standards (NDSS), within the District;
- European nature conservation sites;
- the capacity of schools and education establishments in the area, and
- the long-term management and maintenance of the public open space to be provided within the site.

## Background and Introduction

7. The appeal relates to part of a strategic housing allocation S2(i) "*West of Burnham on Crouch*" identified in the Maldon District Local Development Plan of July 2017 (LDP). The allocation is for a minimum of 180 dwellings. The site has been subject to a number of planning applications. A planning permission for 174 dwellings is currently being implemented. As part of this permission the section of the site closest to the Maldon Road has been completed and the northern part of the spine road, Endeavour Way, is in use.
8. The appeal proposal would increase the number of dwellings on the whole allocation by 36 taking the total number to 210. This would involve the development of four areas which have been previously identified as public open space and developing a fifth area for public open space, including a Local Equipped Area for Play (LEAP). It is common ground between the parties that the whole allocation, even with the additional dwellings proposed as part of this appeal would exceed the policy requirement for public open space.

## Reasons

### *Character and appearance*

9. The four areas proposed to be developed for housing lie on the edges of the development, two in the north and two in the south, of the wider allocated site. The fifth area is more centrally located and would be used for public open space and a LEAP. They are all undeveloped, although clearly part of a construction site.
10. Apart from the parcel of land identified for public open space, they would all provide a mix of housing types from **1 bedroom 'maisonettes'**, through to four-bedroom houses. All would be provided with off road parking and private

gardens and, in some cases garages. The house types would be the same as in other parts of the allocation and would use similar materials and finishes. This would allow the development of these sites to blend with the rest of the development.

11. All the areas of land which are proposed to be used for housing and are subject to this appeal, have one or more of their boundaries in close proximity to the edge of the strategic housing allocation.
12. The area of land in the north west of the allocation would have a hedge and a planting belt between it and the open land outside the site. To its south is a continuation of the housing allocation, to its north a large building (yet to be constructed), landscaped grounds and car parking and to its east, public open space. It would be accessed from the spine road. The developed area is small in relation to the allocation as a whole, it has an east west orientation. These attributes would have the effect of reducing its prominence when viewed from both within and outside the site. Consequently, it would not be seen as either an unacceptable urbanisation of the development nor constitute an abrupt or harsh transition between the countryside to the west and the development site.
13. The area of land in the north east would have a planting strip between it and the site of the Burnham Ramblers Football Club to its east. It would have planting within its boundaries and development to its north and south. Within the site, to its west, would be public open space. Part of the proposed housing would front the estate roads. As a result, it would integrate well with the development as a whole and would not constitute an abrupt or harsh transition from developed to undeveloped land when viewed from within or outside the site.
14. The area of land in the south west would accommodate a single row of detached and semi-detached dwellings facing approved development on the opposite side of the estate road. A further two dwellings would face on to the spine road. There is a planting belt proposed to separate this housing from the employment land to the south and a drainage easement to the west. Consequently, as a result of the separation distances and the proposed planting, the development would harmonise well with the existing development. Moreover, it would not create an abrupt or harsh transition between the development site and the surrounding areas when viewed from either within or outside the development.
15. The area of land in the south east is bounded by development on three sides and by the proposed site for the southern public open space to its north. With the exception of two dwellings which would be accessed off a private drive, all the dwellings front on to the estate roads. To the south lies a planting belt separating the housing from the employment allocation. Internally the orientation of the majority of the dwellings to front the estate roads would mean that the development proposed would respect the developed character of the rest of the allocation. Therefore, the development would harmonise well with its surroundings and its impact when viewed from outside the site would be softened by the planting strip to the south.
16. The Maldon District Design Guide (DG) seeks to ensure that development is delivered at an appropriate density (C13) and soft edges to new developments are created (C19). I have set out above how these requirements of the DG are complied with in the appeal proposal.

17. The Policies of the Burnham on Crouch Neighbourhood Development Plan (NDP) (2017) at S1 and HO.5 support development on the allocated site provided, amongst other things, higher densities are located in the middle part of the site, away from the Maldon Road, and provision of green space is provided to the District Council standards.
18. The appeal proposal increases densities at the edges of the site. However, these are away from the Maldon Road. Moreover, the increase in density does not detract from the overall character and quality of the scheme itself, especially as the site provides for green space in excess of that required by the District Council. Therefore, despite the increase in density, it is consistent with the policies set out in the NDP as the appearance of the site along the Maldon Road is unaffected.
19. To conclude on this matter, I find that the appeal scheme would not have an unacceptable effect on the character and appearance of the area. The LDP at Policies S1, S2, S6, D1 and N1 seeks, amongst other things to ensure that development is sustainable, makes efficient use of land, provides high quality design, and makes a positive contribution to the public realm. I find that the development for the reasons given above is consistent with these policies.

#### *Living conditions*

20. As part of the appeal proposal an area of public open space would be developed on land centrally located within the southern part of the LDP allocation. This would be in addition to an area of public open space in the northern part of the allocation. These areas of public open space would be in close proximity to each other. Additionally, there are areas of informal open space to the west of Endeavour Way, at the entrance to the site, and in the south.
21. All the proposed public open spaces are within easy reach of the housing on the appeal site. In this respect any future occupiers of the new dwellings would have access to the public open space for outdoor recreation. The appellant has stated that the LEAPs are within **5 minutes' walk** of all the dwellings on the development. This has not been disputed by the Council. In terms of the quantum of public open space to be provided this is in excess of the requirement of the Council. The development would therefore be provided with a satisfactory amount of accessible public open space to fulfil the needs of any future occupiers of the dwellings.
22. The Council has made reference to the size of garages as an indication that the site would be **'overdeveloped'**. **Whilst I note that some of the garages are** below the size recommended by the DG, they can still accommodate a car. I also understand that the size of the garage was meant to ensure that they could also accommodate cycle storage. The appellant has provided details of how cycle storage could be accommodated on the plots with garages which are below the DG standard. Consequently, the size of the proposed garages would not unduly harm the living conditions of the future occupiers of the site.
23. In its statement of case the Council has referred to the requirement for some of the houses in the southern development parcels to have mechanical ventilation so that windows facing the employment areas do not need to be opened. This is to prevent these dwellings being affected by noise arising from nearby employment sites, especially in the early mornings. The Council has

argued that this, together with the need to obscure glaze some windows in these dwellings, is an indication that the site would be 'overdeveloped' should the appeal proposal be implemented. I have had regard to these points, however I find that the living conditions of the future occupiers of these dwellings would be protected by the measures suggested and do not consider that this is an indication of over development of the site.

24. I note that the Council has not objected to these factors (size of garages, mechanical ventilation and obscured glazed windows) **in 'isolation', but state** that when taken together they are an indication that the site is 'overdeveloped'. However, when looked at as a whole, the site provides public open space in excess of the required standard, all dwellings have gardens at or above the required standards and all dwellings comply with parking standards. These aspects indicate to me that the appeal site would not be 'overdeveloped' and therefore would not harm the living conditions of the future occupiers of the dwellings.
25. I find therefore that the future occupiers of the appeal scheme would be provided with acceptable living conditions. The NDP at Policies S1, HO.1 and HO.5 support strategic growth in Burnham on Crouch. Policy HO.5 supports higher densities in the middle part of the site, away from the Maldon Road. It also supports development that provides green space in accordance with the **District Council's standards**. Therefore, the appeal proposal is consistent with the NDP on this matter.
26. The LDP at Policies S1, S2, S6, D1 and T2 seeks amongst other things to ensure that development makes effective use of land, makes provision for enhanced green infrastructure, provides usable private and public amenity space, makes provision for car and cycle parking and maximises opportunities for sport and physical recreation. I find that for the reasons given above the development complies with the provisions of these policies.
27. The DG seeks to provide usable open space within development sites, a joined-up network of open spaces to provide physical activity and development at appropriate densities. For the reasons set out above the appeal proposal complies with these requirements.

#### *Affordable housing*

28. The **proposal includes the provision of 40% of the dwellings to be 'affordable'** either through rent or shared ownership. The affordable housing is proposed to be delivered through the s106 agreement.
29. Policy H1 of the LDP requires the strategic allocations at Burnham on Crouch to provide 40% affordable housing. H1 also expects the development of affordable housing to be in conformity with the details set out in the Maldon District Strategic Housing Supplementary Planning Document (SPD). The SPD refers to the Nationally Described Space Standards (NDSS) as being the starting point for any discussion in relation to affordable housing.
30. The Council has confirmed that the s106 agreement provides for the quantum of affordable housing in accordance with Policy H1. However, it does not accept that the s106 agreement adequately delivers on the housing need within the District as it makes no mention of the affordable units complying with the

NDSS. I **have taken this as the Council's remaining objection to the affordable housing provision proposed by the appellant.**

31. The Framework sets out at paragraph 127, amongst other things, that it promotes a high standard of design and amenity for existing and future uses. At footnote 46 it advises that development plan policies may also make use of the NDSS where the need for an internal space standard can be justified.
32. The Written Ministerial Statement (WMS) of 25 March 2015 states that decisions should only require compliance with the national technical standards, which include the NDSS, where there is a relevant current Local Plan policy.
33. The Planning Practice Guidance (PPG) states, amongst other things, that SPD should be used to build upon and provide more detailed advice and guidance on policies in an adopted local plan. As they do not form part of the development plan, they cannot introduce new planning policies such as the compliance with the NDSS. They are however capable of being a material consideration.
34. The Council has not incorporated the NDSS into the development plan, as required by WMS and the PPG. Moreover, it has not justified the use of the NDSS through the collection of evidence. Furthermore, whilst the SPG refers to the NDSS as a **'starting point for any discussions'** it **does not appear to require** compliance with them. As a result, I can give only limited weight to the reference to the non-compliance of the appeal proposal with the NDSS in the SPD.
35. The Council has stated that non-compliance with the NDSS and therefore the SPD would mean that the houses would not meet the area of greatest housing need within the District, namely that for 2 bed 4 person dwellings. I note that in relation to house sizes plan number H7760-2A-TP-003A - affordable housing tenure plan (AHTP) - was supplied with the planning application. The Council raised no objection **to the dwelling's sizes at that time.**
36. This plan shows the dimensions of the affordable housing to be provided on the site. The Council has also been supplied with plans that show the internal layout of the affordable housing. Although the affordable housing tenure plan shows that overall, some of the affordable units are below the NDSS, the Council has not demonstrated how this would make the dwellings unsuitable for this number of occupants and therefore not be able to meet this need. I find that the some of the proposed affordable houses are smaller than the standard set out in the NDSS this is mainly as a result of smaller circulation areas. Overall, the smaller size would not therefore harm the living conditions of the future occupiers.
37. Consequently, whilst some dwellings would not meet the NDSS in terms of floor space, I have not been convinced that this would give rise to unacceptable living conditions for future occupiers.
38. The s106 agreement supplied by the applicant would meet the three tests set out in the Regulations 122(2) of the CIL Regulations (2010) in providing a policy compliant amount of on-site affordable housing.
39. In conclusion, I find that, whilst I can give limited weight to the reference to the NDSS in the SPD, this is insufficient to outweigh the requirement for the delivery of affordable housing on the appeal site and the guidance and advice

on the use of the NDSS set out in National policy. Consequently, I find that the appeal proposal is consistent with Policy H1 of the LDP.

*European nature conservation sites*

40. The appeal site is within 700 metres of the Crouch and Roach Estuaries Special Protection Area (SPA) and Ramsar site (RS). It also lies within the Zone of Influence (ZoI) of other European designated sites within Maldon District, namely the Blackwater Estuary SPA and RS, the Dengie SPA and RS and the Essex Estuaries Special Area of Conservation (SAC).
41. The Council has referred in the third reason for refusal to the lack of a completed legal agreement to secure a necessary financial contribution towards the Draft Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy, Supplementary Planning Document (January 2020) (RAMS SPD).
42. The purpose of this contribution is to mitigate any adverse impacts of recreational pressure brought about by new residential development on the significance of European nature conservation sites in the District. The Statutory Nature Conservation Body (SNCB), Natural England (NE), has supported this approach in specific circumstances and has set this out in a letter to all Essex Councils dated 16 August 2018.<sup>1</sup>
43. The Conservation of Habitats and Species Regulations 2017 (**‘the Habitats Regulations’**) require competent authorities before granting consent for a plan or project to carry out an appropriate assessment (AA) in circumstances where a plan or project is likely to have a significant effect on a European site, alone or in combination with other plans or projects.
44. The European sites referred to above have various qualifying features which have led to their designation. These are set out below.
  - Crouch and Roach Estuary SPA – qualifying feature an assemblage of Dark-bellied Brent goose.
  - Blackwater Estuary SPA and RS – qualifying features – water bird assemblage, including, Dark-bellied Brent goose, Common pochard, Hen harrier, Ringed plover, Grey plover, Dunlin, Black tailed godwit and Little tern.
  - Dengie SPA and RS – qualifying feature, water bird assemblage, including, Dark-bellied Brent goose, Hen harrier, Grey plover and Red knot.
  - Essex Estuaries SAC – qualifying features, subtidal sandbanks, estuaries, intertidal mudflats and sandflats, Salicornia – Glasswort and other annuals colonising mud and sand, cord grass swards, Atlantic salt meadows and Mediterranean salt marsh scrub.
45. The appeal proposal does not involve development within a European site, nor does it lie directly adjacent to such a site. However, the RAMS SPD approach referred to above recognises that development within the ZoI of a European

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<sup>1</sup> Letter from Natural England, dated 16 August 2018, ‘Emerging strategic approach relating to the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) – Revised interim advice to ensure new residential development and any associated recreation disturbance impacts on European designated sites are compliant with the Habitat Regulations’, Ref; 244199

site is capable of having a likely significant effect on the internationally important interest features of the site, alone or in combination with other plans and projects.

46. These likely significant effects would be through increased recreational pressures such as dog walking, walking, sailing, bird watching and jet skiing, giving rise to disturbance. These likely significant effects are identified in the RAMS SPD. The Council state that the RAMS SPD approach is supported by NE. However, and notwithstanding the support for this approach by NE, a Habitat Regulations Assessment is required to be undertaken by a competent authority. As the decision taker in this case this falls to me as the competent authority.
47. It is clear that as the site lies within 700 m of the Crouch and Roach Estuary SPA and there is a public footpath that connects the site with the SPA, it is likely that the potential occupiers of the dwellings could use this footpath to access the SPA for recreational purposes, including walking, dog walking, bird watching and for accessing the foreshore.
48. **The SPA's qualifying feature is an assemblage of Dark-bellied Brent goose (DBBG).** According to the information supplied by the appellant as part of the application the DBBG tend to use the southern bank of the River Crouch, with only small numbers using the north bank near to the public footpath. Moreover, the appellant has supplied a British Trust for Ornithology<sup>2</sup> report that indicates that overtime the greatest congregations of DBBG are on the southern banks of the River Crouch, away from the public footpath.
49. **This is a non-breeding assemblage of DBBG and is described in the appellant's evidence as 'overwintering'. The SPA itself extends to over 1700 hectares** a very small proportion of which would be affected by people using the public footpath accessible from the proposed development.
50. In view of the distribution of the DBBG within the SPA, mainly away from the pathway from the appeal proposal to the SPA, a very small proportion of the SPA is likely to be affected by increased recreational pressure from the proposal and the likely seasonal occupation of the site by the DBBG. It is therefore unlikely that the proposal will have an adverse effect on the integrity of the site in isolation. However, and having regard to the precautionary principle, I cannot be sure that without adequate mitigation, the integrity of the SPA will not be adversely affected by the proposed development in combination with other schemes.
51. As the site lies within the ZoI of other European sites these could be affected by people travelling from the appeal site to these areas for recreational purposes, including the activities identified in the RAMS SPD set out above. This could lead to disturbance of the Waterbirds that form the qualifying features of the sites and damage to the habitats of the SAC which form its qualifying features. This evidence is set out in the RAMS SPD. Therefore, the proposed development could give rise to likely significant effects, either alone or in combination on the internationally important interest features of the sites.

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<sup>2</sup> A Banks, M Collier, G Austin, R Hearn and A Musgrove, "Waterbirds in the UK 2004/05 – The Wetland Bird Survey", British Trust for Ornithology, Wildfowl and Wetlands Trust, Royal Society for the Protection of Birds and Joint Nature Conservation Committee, November 2006.



52. NE has issued advice regarding development that might have an impact on European sites, in terms of recreational pressure, to all Essex councils, referred to in footnote 1 above. In that advice it outlines a process for dealing with developments that would have a **'likely significant effect'** on a European site in terms of increased recreational disturbance. Moreover, at **'Test 2 -the integrity test'** set out in that letter, NE indicates that it should only be consulted on development proposals which would have a **'likely significant effect'** on a European site and are over 100 houses or equivalent and are within or directly adjacent to a European designated site.
53. The appeal site is for 36 houses and is some distance from the boundary of the European sites in Maldon District. Consequently, whilst NE have been consulted on this appeal, there is no specific response from them regarding this proposal.
54. However, as part of the advice issued by NE, it advises that where the proposal is within the Zol of a European site, and not within or directly adjacent to a European site and is a proposal for fewer than 100 houses a proportionate financial contribution should be secured in line with the RAMS SPD.
55. Consequently, I have therefore carried out an AA as required by the Habitats Regulations. Whilst the development would have a likely significant effect on the SPAs, SACs and Ramsar sites, **I can't be certain that it would not have an effect on their integrity.** Therefore, and in accordance with the precautionary principle, mitigation would be necessary to ensure that the integrity of the European sites in the District are protected from any adverse effects of the proposed development.
56. The mitigation proposed in the RAMS SPD is based on the likely numbers of new houses to be delivered through local plans up to 2038 in the Zol of the European sites. This is identified as 72,907 dwellings. The measures identified as necessary to mitigate the effects of these new dwellings on these sites are calculated to cost around £8.9 million. Therefore, a tariff-based approach is adopted requiring £122.30 per new dwelling at 2019 prices (the approach is index linked). The mitigation measures include the provision of education and information, fencing, way marking, screening, pedestrian and dog accesses, enforcement (through a ranger service), habitat creation, partnership working and continual improvement.
57. The Council have commented that the level of contribution is in line with that sought by NE (as the SNCB) and would be sufficient to mitigate the impact of the development on the qualifying features of the Crouch and Roach Estuaries SPA. NE have been involved in the formulation of the RAMS SPD. It is also evident in the RAMS SPD that any contribution from the appeal proposal towards the mitigation of its effects would be used to assist in mitigating its effects on other European sites within its Zol.
58. In the s106 agreement the owner appellant agrees to pay the Council a contribution prior to the occupation of the first dwelling on the site in line with the calculation set out in the RAMS SPD towards the necessary mitigation measures.
59. Having regard to the information supplied as part of the planning application, the position of NE as set out in their letter of 16 August 2018 and the completed s106 agreement I am satisfied that the effects of the appeal scheme

can be adequately mitigated through the contribution proposed to the RAMS strategy set out in the SPD.

60. In this regard I am satisfied that the planning obligation would meet the three tests set out in the Regulations 122(2) of the Community Infrastructure Regulations (2010) in that it would be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.
61. The proposal would therefore be in accordance with Policy S1 of the Maldon District Local Plan that requires development, amongst other things, to conserve and enhance the natural environment by providing protections and increasing local biodiversity.

#### *Capacity of schools*

62. The Council has referred to the need for a contribution to education provision in the area to manage the impact of additional students on the schools in the area.
63. The report to the Planning Committee indicated that the development is expected to generate a need for up to 3.2 early years and childcare places, 10.8 primary school places and 7.2 secondary school places. The report states that whilst there is a surplus of places at the local secondary school this will be insufficient to meet demand and therefore a further 36 places will be required by the end of a ten-year period.
64. I have been supplied with a letter dated 14 February 2020 from Essex County Council as the Local Education Authority (LEA). The evidence in this letter demonstrates that the proposed development would have an impact on the capacity of early years childcare provision, primary education provision and secondary education provision in the area.
65. It is clear from the letter that without a contribution towards additional provision at the levels set out in **the report to the Council's Planning Committee** the proposed development would be unacceptable in terms of its impact on education provision in the area. The letter also sets out how any proposed contribution towards mitigating this impact should be calculated.
66. The applicant has completed a s106 agreement undertaking to contribute to the provision of additional educational facilities in the area to mitigate this impact. The terms of the s106 agreement reflect the calculations set out in the letter from the LEA. I am therefore satisfied that impacts on the local education facilities by the proposed development can be mitigated through the proposed financial contribution.
67. The s106 agreement would meet the three tests set out in the Regulations 122(2) of the CIL (2010) in that it would be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.
68. The appeal proposal would not have an unacceptable impact on education facilities in the area and is in accordance with the policies of the LDP that relate to the provision of local infrastructure, these include Policy I1, S1 and S6.

*Management and maintenance of the public open space*

69. I am satisfied that the completed s106 agreement would provide a mechanism for the provision, management and maintenance of the open space. I also consider that the s 106 agreement would meet the three tests set out in the Regulations 122 (2) of the CIL Regulations (2010).
70. The proposal would therefore provide for the long-term management and maintenance of the public open space to be provided within the site in accordance with the policies of the LDP that relate to the provision of public open space within developments, in particular policies, D1 2) and N1 4).

Other Matters

71. The matter of the number of dwellings and the existence of a 5-year housing land supply has been raised in objection to the proposed development. Whilst I acknowledge that the District is able to demonstrate a 5-year supply of deliverable housing sites it is still important that sites make efficient use of land. The appeal proposal would provide additional dwellings within an existing development site. In doing this the development site as a whole would provide open space **in accordance with the Council's requirements. Consequently,** despite the Council being able to demonstrate a 5-year housing land supply the development is acceptable on its own merits and in terms of the policies set out in the LDP.
72. The matter of the inadequacy of local services in the area and the impact the development would have on these services has been raised. Specific areas of concern have been brought to my attention by the Council and these have been dealt with through a s106 agreement provided by the appellant. However, in other areas such as the capacity of the local National Health Service (NHS) and the adequacy of the local transport network no specific evidence has been provided to demonstrate how the proposed development would give rise to harm to these matters and what if any mitigation would be required, from the development in order to deal with them.
73. I also note that concerns have been expressed over the delivery of employment sites identified in the LDP. However, I see from the LDP that these allocations have been made and I anticipate that they will be developed during the course of the LDP as demand for them allows.
74. I acknowledge that people who have made representations to the appeal are concerned about the design and density of the proposed development. **However, having had regard to the Council's reasons for refusal and to the character and appearance of the development** I am satisfied that it complies with the policies of the LDP in this regard.
75. Finally, my attention has been drawn to the prevalence of litter, late night disturbance and dog fouling, which appears to the person making the representation, to have increased as new developments have been constructed in the town. Whilst I have some sympathy with this view, I have no evidence to connect a likely increase in this activity to the appeal proposal.

## Conditions

76. I have considered the conditions suggested by the Council and any response to them by the appellant against the requirements of the Framework and the PPG. A number of the suggested conditions have therefore been altered and some not imposed.
77. In addition to the conditions relating to time limits and referencing the approved plans there is a need for further conditions to control the implementation of the development. These have either been suggested by the parties to the appeal and have been seen by them.
78. A condition is necessary for the submission of the details of the materials to be used on the external surfaces of the buildings, to protect the character and appearance of the area. However, I do not consider it is necessary to prevent the start of development pending approval of these details and a trigger point around the commencement of above ground works is acceptable.
79. I do not agree that a condition controlling the mix of development is necessary. This is already controlled through the approved plans and the completed s106 agreement.
80. Conditions are necessary to ensure that the landscaping scheme, both hard and soft, boundary treatments and the protection of trees are implemented in accordance with the approved plans. This is to ensure that the appearance of the development is acceptable.
81. A condition is necessary to ensure that the presence of any contaminated land is adequately dealt with in order to safeguard the living conditions of the future occupiers and to prevent pollution.
82. In view of the areas to be developed lying within housing that is either completed or under construction, a condition controlling how the construction is to take place is necessary in order to minimise the disturbance to, and safeguard the living conditions of existing residents. This will need to be submitted before the construction of the housing commences.
83. Conditions are necessary to ensure that surface and foul drainage are acceptable and that any scheme approved by the Council is implemented and maintained to a satisfactory standard. This is to prevent flooding.
84. A condition is necessary to ensure that the car parking is provided to the correct standard prior to the occupation of the dwellings to ensure that adequate provision is made for car parking so that on street parking does not interfere with highway safety.
85. Conditions relating to sustainable transport are necessary to ensure that residents have access to a variety of modes of transport so that they are not reliant on the private car and therefore can contribute to carbon reduction.
86. Given the proposed development is located on the edge of Burnham on Crouch there is a need for ecological enhancement measures to be incorporated within the development so that existing biodiversity in the area is conserved.
87. Given that parts of the development are adjacent to existing and proposed employment areas a condition aimed at mitigating any noise arising from these

areas on the development site is necessary to safeguard the living conditions of future occupiers.

88. I do not consider that a condition is necessary to generally introduce obscure glazed windows at first floor level where they do not face the highway in order to protect the living conditions of residents as I am unconvinced that the proposed development would otherwise be harmed in this regard.
89. The Framework in paragraph 53 states that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so. As there is no clear reason why, I do not consider that a general removal of permitted development rights to construct garden buildings, garages or extensions is necessary. I have therefore not applied the suggested condition.
90. The condition relating to cycle parking suggested by the Council does not comply with the tests for conditions set out in the Framework as it is not precise. I have therefore not included it.
91. A condition controlling the provision of external lighting is necessary given the edge of town location, to prevent light spilling from the development into the adjacent countryside to safeguard the character and appearance of the area and to prevent light pollution.
92. The provision of fast convenient broadband is becoming as essential as other utilities therefore a condition ensuring that the proposed dwellings have access to this service is necessary.
93. Finally, waste management and air quality strategies are necessary to protect the living conditions of the future residents.

#### Conclusion

94. I therefore conclude, and subject to the completed s106 agreement and the conditions set out in the schedule below, the appeal is allowed.

*Peter Mark Sturgess*

INSPECTOR

#### Appendix 1

##### Conditions Schedule

- 1) The development hereby permitted shall be begun before the expiry of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - SDG1H8EL
  - SDG1H8FP
  - LSG1F7-FP-EL
  - SSG1F7-FP-EL
  - P204-FP-EL
  - P268-FP-EL
  - DWB35-FP-EL
  - DWB35-FP-EL (RENDER)

- P341-FP-DELTA
- P341-EL-DELTA
- HA69-FL
- H369EL
- H436-FP
- H436-EL
- H588-FP
- H588-ELR
- SF58/59-FP-EL-DET
- SH50-FP-EL
- SH55-FP-EL
- DWB21-EP-EL
- DWB22-FP-EL
- H7660-2A-SP-012
- 2064 A3 05 B
- H7660-2A-SP-001 A
- 2064 A3 01 B
- 2064 A3 02 B
- 2064 A3 03 B
- 2064 A3 04 B
- 2064 A3 06 B
- H7660-2A-BD-010 A
- H7660-2A-BH-004 A
- H7660-2B-EW-008 Rev B
- H7660-2B-HM-009 A
- H7660-2A-MP-007 A
- H7660-2A-PP-005 A
- H7660-2A-RC-006 A
- H7660-2A-TP-003 A
- H7660-3A-SS-001
- H7660-3A-SS-0011
- H7660-300-01 B
- H7660-312-01 A
- H7660-312-02 B
- H7660-500-01 A
- 7420-D-AIA C

- 3) No above ground works shall commence until samples or product details of the materials to be used in the construction of the external surfaces, including windows, doors, roof tiles and proposed cladding of the development hereby approved 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 prior to the occupation of the development and retained for the lifetime of the development.
- 4) Within the first available planting season following the occupation of the **development the landscaping works shown on plans no's 2064 A3 01B, 2064 A3 02B, 2064 A3 03B, 2064 A3 04B and 2064 A3 06B** and specifications attached to and forming part of this permission shall be fully implemented. If within a period of 5 years from the date of planting any tree or plant, or any tree planted in replacement for it is removed, up rooted, is 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 at the same place, unless the local planning authority gives its written consent to any variation.

- 5) The development shall be implemented in accordance with the hard landscaping work shown on plan no. H7660-2B-EW-008B and the specifications attached to and forming part of this permission. The hard landscaping works shall be carried out prior to the first occupation of the development hereby approved and be retained and maintained for the lifetime of the development.
- 6) Prior to the occupation of the development hereby approved, the boundary treatment shall be implemented in accordance with the details shown on plan no. H7660-2BEW-008B and the specifications attached to and forming part of this permission. The boundary treatment shall be retained and maintained as such for the lifetime of the development.
- 7) The development shall be implemented in accordance with the Tree Survey, Arboricultural Impact Assessment, Arboricultural Method Statement and Tree Protection Plan, dated 07.11.2019, revision C, prior to the first occupation of the development hereby approved. No other trees shall be removed or felled unless otherwise agreed in writing by the local planning authority.
- 8) Should the existence of any contaminated ground or ground water conditions and/or hazardous soil gases be found that were not previously identified or not considered in the scheme. The site or part of the site shall be reassessed and a scheme to bring the site to suitable condition shall be submitted to and approved in writing by the local planning authority within three months of the identification of the contamination or hazard. A suitable condition means one that is acceptable in terms of human health, the water environment and ecosystems and cannot be determined as contaminated land under Part 2A of the Environmental Protection Act 1990.
- 9) No above ground works shall take place, until a construction method statement has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:
  1. The parking of vehicles of the site operatives and visitors.
  2. Loading and unloading of plant and materials
  3. Storage of plant and materials used in the construction of the development
  4. Wheel washing facilities.
- 10) No above 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 hydrogeological 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:
  - Limiting discharge rates to 3.46l/s/ha for all storm events up to and including the 1 in 100-year rate plus 40% allowance for climate change for the entire site.
  - 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 event, plus 40% for climate change.
  - Final modelling and calculations for all areas of the drainage system.

- Detailed engineering drawings of each component of the drainage system.
  - Final detailed drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizes of any drainage features
  - A written report summarising the final strategy and highlighting any minor changes to the approved strategy.
  - The approved scheme shall be implemented in full before the occupation of the first dwelling hereby approved.
- 12) Prior to occupation of the first dwelling a maintenance plan detailing the maintenance arrangements, including who is responsible for the 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. The applicant or any successor in title shall maintain a yearly log of the maintenance undertaken in accordance with the approved maintenance plan and make this available for inspection by the local planning authority as required.
- 13) No development works above ground level shall take place until details of the foul drainage scheme to serve the development has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of the development.
- 14) Prior to the occupation of the development the vehicular parking shall be hard surfaced, sealed and marked out in parking bays and the approved garages shall be erected in accordance with the plans and detailed hereby approved. Fast charging points for electric vehicles shall be provided adjacent to at least one parking space for each new dwelling. The vehicular parking and associated manoeuvring areas shall be retained in perpetuity. The vehicle parking areas shall not be used for any purpose other than the parking of vehicles.
- 15) Prior to the occupation of the development hereby approved the developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport for each dwelling. The contents of the travel pack shall be approved in writing by the local planning authority prior to its distribution. The packs are to be provided by the developer free of charge.
- 16) The development shall be implemented in accordance with the ecological mitigation measures and ecological enhancements set out in the approved Ecological Impact Assessment, dated November 2019. The ecological enhancements as approved shall be implemented and retained thereafter for the lifetime of the development.
- 17) The development shall be implemented in accordance with mitigation measures and recommendations included within the submitted Noise Assessment, dated 7 November 2019, prior to the first occupation of the development hereby approved. The mitigation measures shall be implemented prior to the occupation of the dwellings to which they relate and shall be maintained thereafter.



- 18) No above ground works shall commence until details of the external lighting strategy for the site including the luminance and spread of light and the design and specifications of the light fittings have been submitted to and approved in writing by the local planning authority. All illumination within the site shall be installed in accordance with the approved details and retained as such for the lifetime of the development.
- 19) A scheme to facilitate superfast broadband for the occupants of the dwellings hereby approved shall be submitted to and approved in writing by the local planning authority. The agreed method for facilitating the delivery of superfast broadband within the site shall be implemented prior to the occupation of the first dwelling on the site.
- 20) Prior to the first occupation of the dwellings hereby approved, the development shall be implemented in accordance with the waste management details included in the refuse collection plan no H7660-2A-RC-006 which shall be retained for the lifetime of the development.
- 21) Prior to the first occupation of the development hereby approved, the mitigation measures set out within the submitted Air Quality Statement, dated October 2019 shall be implemented and retained for the lifetime of the development.

End



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## Costs Decision

Site visit made on 23 July 2020

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: Wednesday, 16 December 2020

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Costs application in relation to Appeal Ref: APP/X1545/W/20/3251106  
Land between Chandlers and Creeksea Lane, Maldon Road, Burnham on Crouch, Essex

- 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 David Wilson Homes Eastern Counties for a partial award of costs against Maldon District Council.
  - The appeal was against the refusal of an application for planning permission for erection of 36 dwellings, with associated off-street parking, public open space and landscaping.
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### Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

### Reasons

2. The Planning Practice Guidance (PPG) expects the parties in planning appeals to normally meet their own expenses and that all parties behave in a reasonable way. Where a party has behaved unreasonably and has caused another party to incur unnecessary or wasted expenditure in the appeal process, they may be subject to an award of costs.
3. The circumstances of this cost claim arise at a late stage in the appeal process and relate to alleged unreasonable behaviour by the Council in requiring a draft agreement under section 106 of the Town and Country Planning Act 1990 (the s106 agreement) to be amended to incorporate compliance with the Nationally Described Space Standards (NDSS). The applicant argues that this is unreasonable behaviour for a number of reasons:
  - no reference has been made to the need for the development to comply with the NDSS at an earlier stage, including during the course of the processing of the planning application, in the notice of decision refusing **planning permission and in the Council's** statement of case, and therefore the Council has introduced fresh and substantive evidence at a late stage which has resulted in extra expense being incurred by the applicant;
  - that other recent planning permissions granted around the appeal site, which included affordable housing, were not required to provide houses which complied with the NDSS and therefore the Council has not been consistent in dealing with similar cases;

- that the Council has demonstrated a lack of cooperation with the appellant, by not engaging in a constructive dialogue in order to resolve this matter;
  - that the Council has behaved unreasonably by requiring the applicant to enter into a planning obligation which does not accord with the relevant law or relevant policy in the National Planning Policy Framework (the Framework).
4. The Council has argued that it became apparent through the negotiation of the s106 agreement that the appellant is not proposing affordable housing that **would meet the Council's adopted** standards and policies as they would not comply with the NDSS.
  5. The Policy H1 of the LDP refers to the need for proposals to conform with Maldon District Affordable Housing and Viability SPD (amended 2019) which refers to the NDSS as a '**starting point for discussion**' in relation to affordable housing. The Council has also stated that the Maldon District Design Guide also requires affordable housing to meet the NDSS. Whether or not a development of affordable housing is required to meet the NDSS is a policy issue which should, according to the PPG, be included in a local plan policy. Specific reference concerning the compliance with the NDSS is not included in the relevant policy of the development plan.
  6. The Council consider that this is not a new argument/reason for refusal as the notice of decision refusing the appeal application referred to '**inadequate provision to secure the delivery of affordable housing to meet the identified need in the locality**'. The Council state that as soon as they were aware of this issue, they raised it with the appellant and in an effort to take a pragmatic and positive approach that they have sought to agree a financial contribution to make up the shortfall in terms of bedroom space.
  7. The planning application which is the subject of this appeal is an application for full planning permission. Plans have been supplied by the applicant which show the details of the dimensions of the proposed dwellings and their room sizes. These plans were supplied at the time of the submission of the application and were available to the Council when it made its decision on the application. **These would also have been the plans upon which the Council's Strategic Housing Officer would have commented.** Therefore, the Council would have been aware of the overall size of the affordable housing units proposed by the applicant at an early stage in the planning application process.
  8. As a consequence, I cannot accept that the first time it became apparent to the Council that the appellant was not proposing housing that would meet the NDSS was when it entered into negotiations over the content of the s106 agreement during the course of this planning appeal. It would have had ample opportunity as part of the processing of the planning application to assess the sizes of the affordable housing against the requirements of the NDSS and bring any concerns it had to the applicant's attention at a much earlier stage.
  9. With regard to the comments around the wording of reason for refusal 3, I accept that this could be construed as meaning that the affordable housing proposed did not meet the needs present in the locality and that could have related to the size of the proposed dwellings.

10. However, this reason for refusal needs to be read in conjunction with the statement of case produced by the Council in support of this appeal. The statement of case refers to all the policies of the LDP the Council considers to be of relevance to this appeal and to the Maldon District Design Guide (MDDG). At no point in the statement of case, and specifically in relation to the discussion around reason for refusal 3, are the NDSS referred to. Moreover, **there is no reference to the Council's** Maldon District Affordable Housing and Viability SPD (amended 2019) and its requirement that the NDSS are a starting point for discussion in relation to affordable housing, in the statement of case.
11. It is apparent to me that the applicant would not have been aware of the **Council's concern regarding the proposed affordable housing's** lack of compliance with the NDSS until the discussions with the Council over the s106 agreement in July this year. Those discussions culminated in **the Council's** letter dated 4 September 2020 outlining its further objections to the appeal proposal on the grounds of lack of compliance with the NDSS.
12. The applicant has also referred to the Council not dealing with similar cases in a consistent manner. The larger application surrounding the appeal site was granted planning permission in August 2017. It appears that whilst this was subject to a s106 agreement requiring the provision of affordable housing, there was no requirement that that affordable housing complied with the NDSS. In the appropriate circumstances this could be explained by a change in planning policies between the determination of that application and the application which is the subject of this appeal. However, the LDP was adopted in July 2017 and therefore the same development plan policies would have applied to the 2017 application as to the appeal application. It appears therefore that the Council are not treating similar cases in a consistent manner.

#### Conclusion

13. The PPG requires that for an award of costs to be made, a party has to have behaved unreasonably and that unreasonable behaviour has directly caused another party to incur wasted or unnecessary expenditure in the appeal process.
14. **The Council's requirement that the** s106 agreement includes a reference to the compliance of the affordable housing with the NDSS and to reinforce this position with an explanatory letter amounts to unreasonable behaviour. This is because no specific reference to the appeal proposal needing to comply with the NDSS had been made either during the course of the processing of the planning application, in the notice of decision refusing planning permission or in **the Council's statement of case. The Council's actions therefore are tantamount** to introducing a new reason for refusal at a late stage in the appeal process.
15. Furthermore, the Council has permitted other similar developments without the need for them to comply with the NDSS. Therefore, it has behaved unreasonably by not acting consistently when dealing with similar applications.
16. The applicant has incurred unnecessary expenditure in having to respond to the **Council's case** around the application of the NDSS to the appeal proposal. Therefore, the circumstances for an award of costs to be made set out in the PPG are satisfied.

## Costs Order

17. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Maldon District Council shall pay to David Wilson Homes Eastern Counties the costs of the appeal proceedings described in the heading of this decision, limited to those costs **incurred in contesting the Council's letter** dated 4 September 2020 relating to the application of the Nationally Described Space Standards to the appeal proposal.
18. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Officer is enclosed.

*Peter Mark Sturgess*

INSPECTOR