



Appeal Decision

Site visit made on 14 May 2008

by **Simon Rawle** BA (Hons) Dip TP MRTPI
Solicitor

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

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Decision date:
23 June 2008

Appeal Ref: APP/X1545/A/08/2064100

Drinkwater Farm, Maldon Road, Bradwell-on-Sea, Essex CM0 7HY

- 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 Barion Homes against the decision of Maldon District Council.
- The application Ref FUL/MAL/07/00842, dated 3 August 2007, was refused by notice dated 26 November 2007.
- The development proposed is 12 new houses with workshops.

Decision

1. I allow the appeal, and grant planning permission for 12 new houses with workshops at Drinkwater Farm, Maldon Road, Bradwell-on-Sea, Essex CM0 7HY in accordance with the terms of the application, Ref FUL/MAL/07/00842, dated 3 August 2007, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 3) No building shall be occupied until clear to ground level visibility splays of 2.4 metres x 160 metres to the west and 2.4 metres x 120 metres to the east have been provided either side of the new vehicular access. The visibility splay shall be retained in this form thereafter.
 - 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), unless expressly authorised by this permission no development pursuant to the provisions of Class E and F of Part 1 and Class A of Part 2 of Schedule 2 shall take place.
 - 5) The development shall be carried out in accordance with the approved landscaping scheme shown on the approved plans, unless otherwise agreed in writing by the local planning authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first occupation

of any of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

- 6) The business floorspace of each live/work unit shall be finished ready for occupation before the residential floorspace for each unit is occupied and the residential use shall not precede commencement of the business use
- 7) The business floorspace of the live/work unit shall not be used for any purpose other than for purposes within Class B1 in the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
- 8) The occupation of the residential floorspace of the live/work unit shall be limited to a person solely or mainly employed, or last employed in the business occupying the business floorspace of that unit, or a widow or widower of such a person, or any resident dependants.

Main issues

2. I consider that the main issues in this case are:
 - Whether the proposed development accords with planning policies governing the location of new development and the effect of the proposal on the character and appearance of the area; and
 - Whether the proposal would result in the provision of development in an unsustainable location.

Reasons

3. The development plan includes the Maldon District Replacement Local Plan adopted in 2005. An important material planning consideration is that in 2004 the Council granted planning permission for a development for six live/work units. This scheme was granted permission despite Officers recommending refusal and it is clear from the evidence submitted that the Members were concerned that if planning permission was not granted the site would revert back to the previous use which was a maggot factory for bait.
4. The local plan allocates the appeal site for employment development with the appropriate use indicated as B1 mixed use housing. The emphasis of the proposed development is undoubtedly for housing with the vast majority of floorspace proposed as living accommodation with only a small proportion proposed for business use. As correctly pointed out by the Council, the business element associated with each unit would not be much larger than the proposed garage at each property.
5. Whilst I would prefer to see a mix with a greater proportion of business use, I cannot ignore the extant planning permission. This would provide six units where each unit would have a similar proportion of residential accommodation and business use as proposed here. Given the increase in units the appeal proposal would result in more B1 floorspace. In addition, in the approved

scheme whilst four of the units would be sited in a similar manner as proposed the other two units, located to the rear of the site would be set within substantial grounds of about 1.1 hectares each. Needless to say this would be an inefficient use of the land.

6. I have formed the view that in the event that I were to dismiss the appeal it is likely that the approved scheme would be implemented and it is therefore a material consideration of some weight. Whilst this proposal would add further housing floorspace, it would also add further B1 floorspace and would represent a more efficient use of the land. Given the designation of the appeal site for B1 mixed use housing, the fact that the Council have already accepted that a similar mix of floorspace would be appropriate for a six unit scheme and due to the existence of the fall back position which has a layout that covers the same area as the appeal proposal (albeit with larger garden areas), on balance I consider that the proposed use is acceptable.
7. As pointed out by the Council, Local Plan Policies S2 and CC6 seek to protect the countryside for its own sake and to protect the natural beauty of the District's landscape. This approach is consistent with the advice contained in Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS 7). This document emphasises the importance of the countryside and outlines that new house building in the countryside away from established settlements or from areas allocated for housing in development plans should be strictly controlled. PPS 7 seeks to protect the countryside for the sake of its intrinsic character and beauty. Moreover, the appeal site is located within the Blackwater-Colne Estuary Special Landscape Area (SLA). Within such an area Local Plan Policy CC7 seeks to ensure that development would conserve or restore the character of the area.
8. The appeal site is surrounded by open countryside and although it used to accommodate a maggot factory, this has been demolished. The character of the appeal site and its surroundings derives to a significant extent from its undeveloped appearance set within an attractive rural landscape. However, the appeal site has been allocated for a mix of B1 and housing. In addition, if implemented the extant planning permission would develop the entire appeal site and therefore it cannot be considered to form part of the open countryside.
9. Whilst the proposal would add some additional buildings this would be in the centre of the appeal site within an area previously proposed to be garden areas. As a result, taking account of the fall back position and the local plan designation I consider that the proposal would not have an unacceptable adverse impact on the character and appearance of the area. Nor would it have an unacceptable impact on the SLA.
10. I therefore conclude that the proposed development accords with planning policies which govern the location of new development and it would not have an adverse impact on the character and appearance of the area. Accordingly, the proposed development would accord with the relevant development plan policies and with the national planning advice contained within PPS 7.
11. I turn now to consider whether the proposal would result in the provision of development in an unsustainable location. Although, there are bus services which pass the appeal site, I accept that it is not particularly accessible to local

facilities or services. I have taken account of Local Plan Policy T1 as well as national planning advice which seek to promote sustainable development. However, *Planning Policy Guidance Note 13 - Transport* (PPG 13), recognises that it is important to promote adequate employment opportunities in rural areas and that a realistic approach should be adopted about the availability or likely availability of alternatives to access by car.

12. As outlined above, taking all matters into account the proposed live/work units would be an acceptable use on the appeal site. The proposal would make more efficient use of a site designated for B1 mixed use housing in comparison to an extant planning permission. On that basis and by adopting a realistic approach it is reasonable to expect that within a rural area there would be more reliance on private cars for transport. Given that this proposal would only add an additional six work/live units I do not consider that significant additional traffic would be generated. I therefore conclude that the proposal would not result in the provision of development in such an unsustainable location as to justify dismissing the appeal.
13. I have taken account of all other matters raised including a previous appeal decision which has been brought to my attention by the Council. Whilst consistency in decision making is important each proposal must be determined on its own merits and I have done so here. Moreover, having read the other decision it is clear that there are significant and material differences. Most importantly, in that case the site was considered to be within the open countryside where policies of constraint applied. Here, the site is designated for B1 mixed use housing. As a result the planning context is entirely different and this lessens the weight of the previous decision as a material planning consideration.
14. I have considered the conditions suggested by the parties having regard to the advice in Circular 11/95 - The Use of Conditions in Planning Permissions.
15. To protect the character and appearance of the area it is necessary to ensure that the proposed buildings are constructed using appropriate materials and I shall impose a condition in this regard. Given the setting of the appeal site, there are exceptional circumstances in this case to restrict permitted development rights in relation to outbuildings, hardsurfaced areas and means of enclosure. It is necessary to ensure that the appeal site is appropriately landscaped and I shall impose a condition in this regard. In the interests of highway safety it is necessary to impose a condition in relation to the access arrangements.
16. Furthermore, it is necessary and reasonable to ensure that the B1 element is provided and that proper controls are included to ensure it is retained for that use in the future. In relation to Condition 7, the appellant has suggested some additional wording at the end. However, the current wording is clear and unambiguous. It is always possible for an application to be submitted in the future if a change of use is required. Such an application would be considered on its own merits at that time. The appellant has also raised concerns about the wording of Condition 8 and has suggested a significant change to the wording. However, I cannot accept the proposed change. The intention of the condition is clear and unambiguous. It is necessary to have a tie between the

work and live elements and the condition is broadly similar to the staff accommodation model condition 46 in Circular 11/95. To my mind this gives greater flexibility than the condition suggested by the appellant as it allows for continued occupation after retirement or for the widow or widower in the event that the person who runs the business dies. It also contains the usual provisions for dependants. As a result, I have not amended the wording of the condition.

17. In the interests of precision and enforceability, I have adapted the suggested conditions having regard to the advice in Circular 11/95.

18. For the reasons given above I conclude that the appeal should be allowed.

S.M Rawle

INSPECTOR