
Appeal Decision

Site visit made on 8 November 2016

by R J Jackson BA MPhil DMS MRTPI MCMI

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

Decision date: 23 November 2016

Appeal Ref: APP/P1560/W/16/3153567

Charity Field, Land south of Colchester Road (A133) and west of School Road, Elmstead Market, Essex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Edward Gittings, Edward Gittings & Associates against the decision of Tendring District Council.
 - The application Ref 14/01728/OUT, dated 14 November 2014, was refused by notice dated 5 January 2016.
 - The development proposed is erection of up to 50 dwellings and a new community building, provision of dual-purpose car park, new village allotments and public open space.
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Decision

1. The appeal is allowed and planning permission is granted for erection of up to 50 dwellings and a new community building, provision of dual-purpose car park, new village allotments and public open space at Charity Field, Land south of Colchester Road (A133) and west of School Road, Elmstead Market, Essex in accordance with the terms of the application, Ref 14/01728/OUT, dated 14 November 2014, subject to the conditions set out in the Schedule.

Procedural Matters

2. The application was made in outline with all matters reserved for later consideration, and I will consider the appeal on this basis. However, the application was accompanied by an illustrative layout which I will also take into account.
3. The appeal was accompanied by a Planning Obligation dated 4 November 2016 under Section 106 of the Town and Country Planning Act 1990 (as amended). I will cover this later in this decision.

Main Issues

4. The main issues are:
 - the effect on the character and appearance of the area;
 - whether the location would provide acceptable access to everyday local facilities, by a range of modes of transport;
 - whether the scale of the development would be appropriate to the locality; and
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- whether the proposal makes appropriate provision for affordable housing and infrastructure.

Reasons

Character and appearance

5. The appeal site lies on the west side of School Road a short distance south of its junction with Colchester Road. It is currently an open field with dwellings to the north, which face Colchester Road, to the west facing Alfells Road and Pauls Crescent, and there are two dwellings to the south facing School Road. Opposite the site on School Road is Middle Field School. The site has an area of approximately 6.24 ha with a slight slope to the south. There is vegetation along the south and east boundaries and vegetation on the western boundary at the end of Alfells Road and to the south of 26 Alfells Road.
6. The site lies outside the defined settlement development boundary of Elmstead Market as set out within the Tendring District Local Plan 2007 (the TDLP). The spatial strategy for that plan, set out in Policy QL1, is that in villages, including Elmstead Market, limited development consistent with local community needs will be permitted. This policy also indicates that development will be concentrated within settlement development boundaries. Policy EN1 indicates that the quality of the district's landscape and its local distinctive local character will be protected and, where possible, enhanced. It continues that any development which would significantly harm landscape character or quality will not be permitted. The policy then sets out a number of particular features which contribute to local distinctiveness which are to be conserved, including the setting and character of settlements.
7. The National Planning Policy Framework (the Framework) notes in paragraph 47 that in order to boost significantly the supply of housing, local planning authorities should ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area. The Council accepts that the TDLP does not meet the full, objectively assessed needs for the area and therefore, in line with paragraph 215 of the Framework, the relevant policies for the supply of housing land are inconsistent with the Framework.
8. In response to this situation the Council has published the Tendring District Local Plan: 2013-2033 and Beyond – Preferred Options Consultation Document (the POCD). This replaced the Tendring District Local Plan: Proposed Submission Draft (2012 as amended by the Pre-Submission Focussed Changes (2014)) referred to in the decision notice. Although the Council maintains that the POCD is consistent with the Framework in setting out the full, objectively assessed needs for the area, this has not been tested and I am advised that there are outstanding objections. I therefore, in line with paragraph 216 of the Framework, can only give the POCD limited weight.
9. The development of the site for housing and a community building would have an urbanising effect on the character and appearance of the area. However, the site is not in an area where the landscape is designated for any reason. Currently development extends along School Road to the south from the junction with Colchester Road, particularly on the opposite side of the road, and there is development to the south of Colchester Road to the west of the appeal site in the Alfells Road/Pauls Crescent area. The proposed development

would therefore be partially enclosed by existing development, and would be compatible with development in the area more generally. Consequently, any harm to the landscape can only be described as limited.

10. However, the proposal would be contrary to the terms of Policies QL1 and EN1 of the TDLP in that it would be located outside the settlement development boundary of Elmstead Market and would be harmful to the character and appearance of the landscape. It would also be contrary to the POCD. Finally it would be contrary to paragraph 17 of the Framework in that it would not recognise the intrinsic character and beauty of the countryside.

Means of transport

11. It is an important part of planning policy that development should be located where the need to travel is minimised. Policy QL2 of the TDLP indicates that all new development should be located and designed to avoid reliance on the use of the private car and promote travel choice. It continues that permission will not be granted for development if it is not accessible by a choice of means of transport. This reflects the guidance in paragraph 34 of the Framework that developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes maximised. The Framework does, however, note that this needs to take account of other policies in the Framework, particularly in rural areas.
12. The site is in a rural area. The evidence to support the POCD has defined the village of Elmstead Market as a Rural Service Centre and the appeal site has a number of facilities in close walking distance including a store, post office, restaurant, take-aways and petrol filling station. I also saw some small-scale employment uses close to the appeal site.
13. Elmstead Market has a bus service although this does not continue into the later evenings. As the bus stop is within walking distance of the appeal site it would provide an option for those travelling to work along its routes, and improvements to the bus stops can be secured by condition which would encourage the use of these services. It is not the aim of planning policy to eliminate the need to travel by car, and it is inevitable that a good proportion of journeys would still be undertaken by car, including to shopping and to leisure activities. The delivery of a Residential Travel Plan would ensure that the initial occupiers of any dwellings would be aware of the non-car options available to them. By locating housing close to the centre of the village the proposal would help to maintain the vitality of the rural community in line with paragraph 55 of the Framework.
14. The appeal site is well located and within walking distance of local facilities but would involve the need to travel to higher order facilities. Overall, subject to conditions to enhance the bus stops and provide a Residential Travel Plan I consider that the proposal would comply with Policy QL2 of the TDLP as set out above and would comply with paragraph 34 of the Framework again as set out above.

Scale of development

15. The Council is concerned about the scale of development in the locality noting that it has already granted, or resolved to grant, planning permission for development elsewhere in the village of Elmstead Market. Policy QL11 of the

TDLP indicates that development will only be permitted if it meets a number of criteria. Included within these is that the scale and nature of the development is appropriate to the locality.

16. These additional developments would represent a 10% increase to the existing dwelling stock of Elmstead Market and, if permitted, the appeal proposal would increase this to nearer 17%. However, this should be compared with the potential increase in housing in the district in the forthcoming local plan. Under the POCD the overall housing stock would increase by approximately 16%, and, of course, this figure has yet to be tested and may change. Given the overall intention set out in paragraph 47 of the Framework to boost significantly the supply of housing it is likely that there will be some overall increase.
17. The overall strategy of the POCD has not been tested, and as I understand it there are objections to the distribution proposed. For the same reasons set out above the overall distribution approach of the POCD can only be given limited weight. I therefore am of the view that the increase in the dwelling stock in the village would be commensurate with the proposed increase in the district as a whole. As such, the proposal would not represent a disproportionate increase, or one that would harmfully change the character of the village. That there would new development on each of the approaches to the village is not, of itself, a good reason in my view to dismiss the appeal.
18. I am therefore satisfied that the scale of the development would be appropriate to the locality. As such the proposal would comply with Policy QL11 of the TDLP as set out above. It would also comply with paragraph 17 of the Framework in that it would support a thriving rural community.

Affordable housing and infrastructure

19. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations) states a planning obligation may only constitute a reason for granting planning permission if the obligation passes three requirements. This is reiterated in paragraph 204 of the Framework. These requirements are that the Obligation is necessary to make the development acceptable in planning terms, that it is directly related to the development and fairly and reasonably related in scale and kind to the development.
20. Regulation 123 of the CIL Regulations also states a planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure where five or more separate planning obligations provide for the funding or provision of that project or provide for the funding or provision of that type of infrastructure.
21. Policy QL12 of the TDLP indicates that when granting planning permission the Council may seek contributions to secure one or more of a range of facilities including community and educational facilities, sport, leisure and recreation facilities and affordable housing. Policy HG4 of the TDLP indicates that there is an expectation that 40% of new dwellings will be made available in the form of affordable housing secured through a planning obligation.

22. The Planning Obligation makes provision for 25% of the dwellings to be affordable and this is less than the policy requirement. However, the Council has confirmed that the quantum is that necessary to make the development acceptable in planning terms. As set out above the Local Plan should meet the full, objectively assessed needs for market and affordable housing in the housing market area. I am therefore satisfied that there is a need for affordable housing in the area and that affordable housing is therefore necessary. The provision of affordable housing would be directly related to the development and fairly and reasonably related in scale and kind to the development. I am therefore satisfied that there would be compliance with Regulation 122 of the CIL Regulations in this regard. As affordable housing does not represent infrastructure under the CIL Regulations Regulation 123 is not engaged.
23. The Obligation also makes provision for securing and delivery of the allotments, the on-site public open space and a community hall and associated land. Insofar as the proposal will increase the population in the area I am satisfied that these facilities are necessary to meet the demand for such facilities. The provision of these facilities would be directly related to the development and fairly and reasonably related in scale and kind to the development. I am therefore satisfied that there would be compliance with Regulation 122 of the CIL Regulations in this regard. As this would be the first Obligation which provides for these facilities I am satisfied that they comply with Regulation 123.
24. Similarly, as the proposal does not make provision for on-site play equipment I am satisfied that there is a need for additional provision in the area and it is therefore necessary, in line with Policy QL12 of the TDLP as set out above. The Obligation makes provision for the provision of equipment and/or improving the facilities at the play area at Old School Lane. I am satisfied that this play area is sufficiently close so that it directly relates to the development being permitted and the sum provided is reasonable in scale and kind. I am also advised that there would be no more than four obligations towards these works and consequently the proposal complies with Regulation 123.
25. The Planning Obligation also provides for contributions towards the provision and/or improvement of facilities for the care of primary school aged children at any or all of a list of six Primary Schools, and towards transport for secondary school aged children to the nearest secondary school with capacity. I will deal with these in turn.
26. Essex County Council indicates that there would be a deficit of primary school places in the Brightlingsea/Elmstead forecast planning area which would be exacerbated by proposal. Given the proposal would result in additional children in the area I am therefore satisfied that there is a need for a contribution to make additional provision. The contribution would be spent on one of six schools in the relevant forecast planning area and Elmstead Primary School is one of these schools. However, it seems to me that there is insufficient link between the schools in the wider sense and the proposal. This means that the facilities provided would not directly relate to the development. The contribution therefore fails to comply with Regulation 122. I would have been satisfied that the sum sought would have been fairly and reasonably related in scale and kind to the development as it would have been in accordance with the County Council's Developers' Guide to Infrastructure.

27. With regards the contribution towards secondary transport the need to transport children would be increased by the development. I am therefore satisfied that this is necessary as it would ensure that those living on the site would be able to access secondary education in line with Policy QL12. The contribution secured would directly relate to the development and would fairly and reasonably relate in scale and kind to the development, and thus comply with Regulation 122. As a contribution towards the provision of transport is not infrastructure as so defined, Regulation 123 is not engaged.
28. Through the Planning Obligation, with the exception of the contribution towards primary education, the proposal makes adequate provision towards affordable housing and other infrastructure. As such although not complying with Policy HG4 of the TDLP it would make adequate provision for affordable housing. It would comply with Policy QL12 as regards the remaining items or requirements. It would also comply with paragraphs 203 to 205 of the Framework regarding Planning Obligations. Insofar as the proposal does not provide sufficient primary education provision there would not be compliance with these policies.

Other matters

29. There are a number of listed buildings adjacent to the appeal site facing Colchester Road. All of these are within their own separate curtilages and, only one of these, The Limes, is open to the appeal site. Their significance as identified in the listing entries relates mostly to their ages and construction. Subject to appropriate landscaping on the appeal site I am therefore satisfied that in each case the setting of the individual listed buildings would be preserved. Therefore there would be compliance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) which requires special regard to be given to the desirability of preserving the listed buildings or their settings.
30. A number of local residents have objected to the form of development shown on the illustrative layout, considering if planning permission is granted then the layout should be 'swapped' with the housing development on the southern part of the site and the open space on the northern part. This is not for consideration as part of this outline application and will be the subject of consideration under any application for approval of reserved matters as would be the architectural style of any new dwellings. Notwithstanding this, I am satisfied it would be possible to ensure any layout for the number of dwellings proposed did not have a harmful effect on the living conditions of any adjoining occupier, for example by overlooking leading to a loss of privacy.
31. Concern has also been expressed about the increase in traffic and, in particular, the proximity of the access to Manor Field School. I note that the application was accompanied by a Transport Assessment and the Highway Authority had no objection, subject to conditions, to the proposal. I am therefore satisfied that the proposal would not have a severe residual cumulative impact which is the test set out in paragraph 32 of the Framework if permission is to be refused.
32. Finally objection has been raised on the effect on ecology. However, I note that Natural England, the Government's specialist ecological advisor, has raised no objection, and subject to appropriate surveys and a management plan,

which could be delivered through a condition, I am satisfied that the proposal would not have a harmful effect on ecology.

Planning Balance

33. The Framework indicates in paragraphs 6, 7 and 8 that the purpose of the planning system is to contribute to the achievement of sustainable development. Sustainable development has three roles, economic, social and environmental which cannot be undertaken in isolation because they are mutually dependent.
34. As noted above the policies of the TDLF as respect the supply of housing land are not consistent with the Framework in not providing for the full, objectively assessed needs of the area. While the POCD has sought to identify those needs, the Council accepts that even using the figures set out in that plan it cannot demonstrate a five year supply of housing land. As such the relevant policies for the supply of housing cannot be considered to be up-to-date and this includes policies restricting development in the countryside and those setting the overall strategy of housing development. Therefore in line with paragraphs 49 and 14 of the Framework planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
35. There would be the economic benefits of housing and affordable housing both during construction and through occupation. There would also be an economic benefit through the construction of the community building. This provision would also be of social benefit as would be the provision of the open space, allotments, and other community benefits secured through the Planning Obligation. Although the provision of affordable housing is not in compliance with the TDLF the Council has confirmed that it is the quantum necessary to make the development acceptable in planning terms. I therefore give these benefits significant weight.
36. I have concluded that subject to conditions to enhance the bus stops and provide a Residential Travel Plan the proposal would be appropriately located, but this is only of limited positive weight in the overall balance due to the need to travel to higher order facilities.
37. Set against this is the harm I have identified to the environment through the urbanisation of this section of countryside, but for the reasons set out this harm is limited. There would also be harm to the social role in that the proposal would not make adequate provision for primary education. However, I consider that this harm would, within the overall context of the whole forecast planning area, only be limited.
38. Consequently the harms do not significantly and demonstrably outweigh the benefits of the development, and while, overall, there would not be compliance with the terms of the development plan other material considerations indicate that a decision should be made otherwise than in accordance with those policies. Therefore planning permission should be granted.

Conditions

39. I have considered the conditions put forward by the Council against the requirements of the national Planning Practice Guidance (the PPG) and the Framework. The number in brackets sets out the number of the condition in

- question. In addition to the standard timescale conditions (1, 2, 3), I have imposed a condition specifying the relevant drawing as this provides certainty (4).
40. A significant number of the conditions put forward by the Council would relate to the reserved matters. For example, as access is reserved all matters relating to the junction with School Road, including piping of any ditch, and the construction of the roads should be dealt with at that stage. Equally, the layout and construction of the roads, the size and number of the parking spaces and bicycle parking are all aspects of the layout which is also reserved. As landscaping is reserved details of that and when it should be planted also relate to the reserved matters.
41. The Council has requested a condition that would encourage a local recruitment strategy for construction workers and thereafter. While appreciating the desire behind such a condition I do not consider that such a condition would meet the tests in the Framework and the PPG in that it would not be necessary to make the development acceptable in planning terms or sufficiently precise or enforceable.
42. The Council has requested a condition to allow for the phasing of development. Being a scheme for only 50 dwellings and limited community facilities I do not consider that this is necessary. Because of the overall size of the appeal site, and that it would be physically possible to construct more than 50 dwellings on the site, notwithstanding the description of the proposal a condition limiting the number of dwellings is necessary (5) as this would ensure certainty. I also consider that as the vehicular access has been assessed as being from School Road only, in order to protect highway safety and to ensure that vehicular traffic does not harm the living conditions of occupiers of dwellings in Alfells Road, Pauls Crescent and Laurence Close, vehicular access should be restricted to being from School Road (6). The precise details of the access arrangements are for any application for reserved matters.
43. In order to ensure the health and longevity of trees around the perimeter of the site details of tree protection measures need to be agreed and installed prior to any works commencing on site (7).
44. The Flood Risk Assessment submitted with the application notes that the site lies in Flood Zone 1 on the Environment Agency's map and there is a low risk of flooding from groundwater and low risk of flooding from other sources. However the Local Lead Flood Authority has raised a number of concerns and the Environment Agency has raised no objection subject to conditions. In order to ensure that the site is not at risk of flooding, details of surface water drainage systems, based on the principles of sustainable drainage, need to be agreed prior to works commencing on site, and delivered and managed thereafter (8, 9, 10, 11).
45. As set out above, in order to protect ecology an Ecological Mitigation Scheme needs to be submitted and delivered prior to works commencing on site (12).
46. In order to ensure highway safety and to protect the living conditions of occupiers of neighbouring properties a Construction Management Plan needs be submitted prior to works commencing on site and maintained throughout the construction period (13).

47. I note that there are a number of below ground archaeological sites surviving in the near vicinity (particularly to the south of the proposed development), suggesting that similar activity may extend into the appeal site. I am therefore satisfied that a scheme to ensure the proper investigation and recording of any archaeological remains is necessary and needs to be undertaken prior to any works commencing on site (14, 15).
48. Paragraph 42 of the Framework makes clear an advanced, high quality communications infrastructure is essential for sustainable economic growth including facilitating home working. I am therefore satisfied that there should be provision of broadband facilities (16).
49. As identified above conditions requiring enhancement to bus stops (17) and a residential travel plan (18) are necessary to ensure that the use of non-car borne transport modes are encouraged.
50. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.

Conclusion

51. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

RJ Jackson

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: Location Plan.
- 5) The maximum number of dwellings to be contained within the development hereby approved shall be 50.
- 6) The sole vehicular access shall be taken from School Road and there shall be no vehicular connection between the site and Alfells Road, Pauls Crescent or Laurence Close.
- 7) No equipment, materials or machinery shall be brought on site in connection with the development hereby permitted, and no works, including site clearance or any other preparatory works, undertaken until the tree protection measures have been erected on site in accordance with details submitted to and approved in writing and agreed in writing as complete by the local planning authority. The protection shall be retained until the development is complete and nothing shall be placed within the fencing, nor shall any ground levels be altered or excavations made.
- 8) No development shall commence 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 shall be fully implemented and subsequently maintained in accordance with the timing/phasing arrangements embodied within the scheme so approved.
- 9) No development shall commence until a scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.
- 10) No development shall commence until a Maintenance Plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies has been submitted to and approved in writing by the local planning authority. The maintenance shall take place in accordance with the approved scheme.
- 11) The adopting body responsible for maintenance of the surface water drainage system shall record yearly logs of maintenance carried out in accordance with the approved Maintenance Plan and these must be available for inspection upon request by the local planning authority.

- 12) No development shall commence until an Ecological Mitigation Scheme and Management Plan has been submitted to and approved in writing by the local planning authority. The document shall include:
- i) A survey to confirm (or otherwise) the presence of protected species on the application site. If protected species are present, the survey shall be accompanied by a scheme of appropriate mitigation measures (including precise details of the timing and method/s of protection). No development shall be undertaken except in full accordance with any such approved scheme of mitigation.
 - ii) A management plan to demonstrate how biodiversity within the site will be encouraged by the development.
- 13) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities;
 - v) measures to control the emission of dust and dirt during construction; and
 - vi) delivery and construction working hours.
- The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 14) No development shall take place until a Written Scheme of Investigation of archaeology has been submitted to and approved in writing by the local planning authority. The scheme shall include:
- i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment;
 - iii) the provision to be made for analysis of the site investigation and recording;
 - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) the provision to be made for archive deposition of the analysis and records of the site investigation; and
 - vi) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 15) No development shall take place other than in accordance with the Written Scheme of Investigation approved under condition 14.
- 16) The development hereby permitted shall not be occupied until a broadband connection, on an open access basis, has been installed in accordance with details submitted to and approved in writing by the local planning authority.
- 17) The development hereby permitted shall not be occupied until a scheme for the enhancement of the two bus stops on Clacton Road opposite the old Kings Arms Public House has been submitted to and approved in writing. The development shall not be occupied unless the approved scheme has been fully implemented.

- 18) Prior to occupation of the proposed development, a Residential Travel Plan, including the initial commitments, shall be submitted to and approved in writing by the local planning authority. The Residential Travel Plan shall include a commitment to provide a Travel Plan co-ordinator within the residential sales office to give advice to the new residents of the development. It shall also include provisions to be amended and supplemented under the provisions of a yearly report to be submitted to the local planning authority on the anniversary of the approval of the initial Residential Travel Plan for a period of 5 years.

END OF SCHEDULE