The Planning Inspectorate

Appeal Decision

Site visit made on 22 November 2016

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 23 December 2016

Appeal Ref: APP/P1560/W/16/3151169
Land west of Heckford's Road, Great Bentley, Colchester, Essex CO7 8RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to outline grant planning permission.
- The appeal is made by Welbeck Strategic Land II LLP, M MacDonald, R MacDonald and R L MacDonald against the decision of Tendring District Council.
- The application Ref 15/01820/OUT, dated 30 November 2015, was refused by notice dated 24 May 2016.
- The development proposed is the erection of up to 50 dwellings together with open space, landscaping, sustainable drainage and vehicular/pedestrian accesses from Heckford's Road.

Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 50 dwellings together with open space, landscaping, sustainable drainage and vehicular/pedestrian accesses from Heckford's Road at land west of Heckford's Road, Great Bentley, Colchester, Essex CO7 8RR in accordance with the terms of the application, Ref 15/01820/OUT, dated 30 November 2015, subject to the conditions set out in the attached schedule.

Application for Costs

2. An application for costs was made by Welbeck Strategic Land II LLP, M MacDonald, R MacDonald and R L MacDonald against Tendring District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. All matters except access were reserved for further approval. The proposed vehicular and pedestrian access arrangements are shown on application drawing No 5153.001 Rev H. The application included a Parameters Plan showing land use, density and building heights (drawing No 04677.00009.16.007.2). I have taken the Illustrative 3D Model (drawing No 04677.00009.16.011) submitted with the application to be illustrative only.

Main Issue

4. The main issue is the effect on pedestrian safety of the proposed footpath to the south of the site.

Reasons

5. The appeal site is located on the north side of Great Bentley with local facilities, services and public transport links concentrated closer to the village green to the south. The proposal includes a 2m wide footpath running from a new vehicular access off Heckford's Road to the south east corner of the site. Between this corner of the site and The Path, which provides a pedestrian route to the village green, is a section of highway verge bounded by the carriageway and the front boundaries of residential properties.

6. It is proposed to replace the verge with a footpath in order to complete the pedestrian route to the village green. The reason for refusal states that the footpath would narrow to 1.2m for a length of 27m and that this 'pinch point' would pose a risk to safety as users, particularly those with a wheelchair, trolley or pram may be tempted, or need, to step into the carriageway in order to pass one another. The appellant contends that the footpath would vary in width between 1.2m and 1.4m for a length of some 16m and would otherwise be 1.5m wide. The scale and level detail shown on application drawing 5153.001 Rev H does not allow the exact width of the footpath to be established. However, I saw on the site visit that the width of the highway verge varies and, therefore, that the footpath would be more than 1.2m wide for a considerable proportion of its length.

7. Manual for Streets (MfS) remains the most up to date advice for the design, construction and maintenance of new and existing residential streets. It advises that footpaths should generally have an unobstructed width of 2m, but that widths can vary to take into account pedestrian volumes and composition. A 1.2m wide footpath would accommodate a wheelchair user or an adult and child, but a width of 1.5m is necessary to allow a single pedestrian and a pushchair user to pass[1].

8. The appellant has used TRICS data to the estimate that the two way pedestrian flow on the footpath during the morning peak hour would be around 22 people, including those from the Admirals Farm development[2] on the east side of Heckford's Road. Having regard to the likely number of school pupils living at both sites and walking to the Primary School, the actual figure may be somewhat higher. Nevertheless, the level of usage would still be comparatively low. Having regard also to the likelihood that most people would be travelling in the same direction southwards to where most local facilities and services are located, and that the footpath would narrow to 1.2m for a relatively short length, it is likely that there would be few opposing movements. I have also taken into account the existence of an alternative pedestrian route to the local facilities via Sturrick Lane.

9. The Council states that the pinch point would be on an outside bend where forward visibility is limited, but goes on to say that the distance between the pinch point and the point at which it would become visible to drivers travelling along Heckford's Road is well within the reasonable stopping distance for a vehicle travelling at the legal speed limit (in this case 30mph).

10. The appellant's evidence indicates that forward visibility for drivers travelling north around the bend (and therefore on the side of the road closest to the

[1] MfS figure 6.8
[2] Application reference 16/00133/OUT

footpath) is at least 45m[3] and that the 85th percentile speed was measured at around 26mph[4]. Neither Tendring District Council nor the Highway Authority has disputed these findings or the methodology used in the speed survey. It also accords with my site visit observations. Whilst local residents argue that vehicles travel round the bend at considerably faster speeds, the frequency of those occurrences and the method of measuring those speeds have not been provided. I am also mindful that the proposal includes measures designed to slow approaching vehicles. MfS advises that the safe stopping distance for vehicles travelling at 30mph is 40m, which is less than the forward visibility available around the bend.

11. The appellant's Transport Assessment finds that 279 vehicles per hour would travel north on Heckford's in the morning peak[5]. This would be a relatively low volume of traffic. Concern has been expressed locally regarding the effect of additional traffic from other developments. However, the sites at Admirals Farm and Plough Lane have been taken into account in the appellant's Transport Assessment. The site of 400 dwellings at St Osyth is some distance away and, based on the information available, I am not convinced that it would add significantly to the volume of traffic in the vicinity of the proposed footpath.

12. The Council has also suggested that drivers of vehicles may misjudge their speed at the bend, loose control and veer towards the proposed footpath which located on the outside of the bend. However, the published accident data does not record any incidents on the bend in the last five years. The information and photographs supplied by a local resident are not dated and appear to relate to a section of road to the east of the proposed footpath. Moreover, following a site visit, the Highway Authority did not object to the proposal on safety grounds and the proposal would include measures designed to slow approaching vehicles. Therefore, whilst I recognise that the proposal would lead to the presence of more pedestrians in this location and a slight narrowing of the carriageway, I am not persuaded that the situation would pose a greater safety risk than many other footpaths in similar locations.

13. Taking all of these factors into consideration, I find that the proposed footpath would not represent a risk to pedestrian safety. As such, it would accord with Policy TR3a of the Tendring District Local Plan 2007 (LP) which requires developments, where practicable, to link with existing footpaths and public rights of way and to provide convenient, safe, attractive and direct routes for walking. It would also comply with paragraph 32 of the National Planning Policy Framework (the Framework) to the extent that it requires proposals to achieve safe and suitable access to the site for all people.

Planning Obligation

14. The appellant has submitted a revised signed unilateral undertaking (UU) dated 8 November 2016. The UU has manuscript amendments which seek to address the concerns expressed by the Council in respect of the original version. The Council has confirmed that it is content with the revised UU except in relation to the options for affordable housing provision.

[3] Annex 8 of the appeal statement
[4] Speed Survey dated 7 April 2016
[5] Transport Assessment November 2015 – Appendix L - 2020 with committed and development flows

15. The UU allows for affordable housing to be provided in the form of a 'Scheme' of not less than 30% of the dwellings to be constructed on the site, or an 'Option' of four of dwellings to be transferred to the Council at an affordable housing price or a 'Contribution' equal to the market value of four affordable housing dwellings. The UU requires the Owner and/or Wellbeck (the developer) to give the Council two months' notice of which form of provision it requires. In the event that the Council does not respond within this period the terms of the UU allow the developer to decide whether to implement the Option or the Contribution.

16. The Council is concerned that it may be required to accept a Contribution when its policy is to seek on site affordable housing provision. Further that the Contribution may not deliver the affordable housing. However, as well as giving the Council two months to decide which form of provision it requires, the terms of the UU require the developer to issue a warning notice five days before the period expires. Nothing in the Council's submissions suggests that two months is an inadequate period of time in which to respond. Consequently, I consider that the Council's concerns regarding this matter are unfounded.

17. I have considered the UU in light of the statutory tests contained in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 which require planning obligations to 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.

18. Policy HG4 of the LP requires up to 40% of dwellings on qualifying sites to be affordable housing. However, the Council's 2013 viability evidence in support of the emerging Local Plan demonstrates that 40% affordable housing is unlikely to be viable in the District. The Council, therefore, seeks to negotiate a lower percentage. Its Housing Needs team has advised that there is a need for affordable housing in Great Bentley based on evidence from the local housing resister. I am satisfied therefore that the affordable housing provisions of the UU are fairly and reasonably related to the development proposed and pass the statutory tests.

19. Policy QL12 of the LP states that the Council may seek planning obligations to secure community, education, sport, leisure and recreation facilities and transport infrastructure, among other things. The UU includes financial contributions of £182,580 for primary school facilities and £41,925 towards secondary school transport costs. These are based on the Local Education Authority's formula for calculating the number of additional places required as a result of the development. A contribution of £15,080 for healthcare capital funding is based on an NHS Healthcare Impact Assessment.

20. The Council's Open Space and Bereavement Service Manager has identified a deficiency in equipped play areas in Great Bentley. The UU would secure a contribution of £50,000 for such facilities as well as the provision, management and maintenance of an on-site open space scheme in accordance with LP Policy COM6 and the Council's 'Provision of Recreational Open Space for New Development' Supplementary Planning Document 2008.

21. A contribution of £12,000 would be provided towards bus stop improvements in Heckford's Road or Thorrington Road. The provision of Residential Travel Information Pack and bus tickets for three weeks for the first occupier of each

dwelling at the development would help satisfy the Framework's objectives for prioritising sustainable transport modes.

22. Therefore I consider that these obligations meet the statutory tests in CIL Regulation 122. The Council has confirmed that none of the obligations would result in the pooling of five or more obligations entered into since 6 April 2010 for the relevant projects or types of infrastructure. As such, the obligations would meet the requirements of CIL Regulation 123 and I have taken them into account.

Planning Balance

23. The site falls outside the settlement boundary for Great Bentley. However the Council accepts that it cannot demonstrate a five year supply of deliverable housing land. The appellant and the Council disagree over the exact position. I recognise that the Council considers that the position has improved recently and that it is progressing its emerging Local Plan. However, even taking the Council's figure of 4.5 years supply, this still represents a significant shortfall to which the 50 proposed dwellings would make a worthwhile contribution. In the absence of a five year supply, paragraph 49 of the Framework advises that relevant policies for the supply of housing should be regarded as out of date. Therefore, the site's location outside of the settlement boundary does not carry significant weight against the proposal.

24. Moreover, in accordance with paragraph 216 of the Framework, limited weight can be given to the policies of the emerging Local Plan, including those which, the Council advises, allocate housing sites elsewhere without affecting pedestrian safety.

25. Framework paragraph 14 sets out a presumption in favour of sustainable development where the development plan is absent, silent or out of date and paragraphs 7 and 8 require the economic, social and environmental dimensions of sustainability to be considered together.

26. The proposal would contribute to the economic role of sustainability through additional expenditure in the local economy, increased Council Tax revenue and the New Homes Bonus. During the construction phase, it would also provide employment and expenditure benefits.

27. Turning to the social role, whilst the application has been made in outline, the accompanying Illustrative 3D Model drawing shows that the proposed houses and roads could be accommodated on the site without impinging on the boundaries with neighbouring residential areas. As such, I am satisfied that it would be possible to produce a detailed scheme which would not adversely affect the living conditions of neighbouring occupiers by reasons of overlooking, overshadowing, noise or the like.

28. Concern has been expressed locally regarding the cumulative effect of this development and other recent and approved residential schemes in Great Bentley (some totalling 300 dwellings according to the Parish Council). The emerging Local Plan identifies Great Bentley as a Key Rural Centre which can support limited development. However, I have already found that limited weight can be accorded to this Plan. Nevertheless, I recognise that the scale of the new developments in relation to the size of the settlement could be disruptive. However, the appellant has submitted a Planning Obligation which

would secure financial contributions towards primary education provision, secondary education transport, health care, equipped play space, open space provision and bus stop improvements. The payment of these contributions would be linked to the occupation of the proposed dwellings and would, therefore, address the effects of the proposed development in a timely manner.

29. New residents would also help to support local facilities and services. Moreover, the proposed houses, which could include the provision of at least 30% affordable units[6], would make a meaningful contribution to the housing needs of the District where there is an identified shortfall in the supply of housing land. I attach significant weight to this benefit. Therefore, I find that the proposal would contribute positively to the social role of sustainability.

30. With regard to the environmental role, given my conclusion above on the proposed footpath, there is no other substantive evidence to demonstrate that the appeal site is not sustainably located with regard to local services, facilities and public transport. The south east corner of the site abuts the Great Bentley Conservation Area and its Character Appraisal identifies important views out towards the site. However, the Illustrative 3D Model shows that the eastern side of the site would be landscaped open space which would maintain the setting of the Conservation Area. There is evidence of archaeological landscape features at the site. However, conditions could be used to ensure that these features are preserved or recorded prior to development taking place.

31. The site is contained by built development on its eastern, western and southern sides and projects no further north than the adjoining Bentley Grange development. As such, I consider that it relates reasonably well to the existing settlement and would not be unduly intrusive in the landscape. Details of the landscaping along the site boundaries could be controlled through the reserved matters submissions.

32. There is evidence that the site boundary hedges contribute to bio-diversity by supporting protected species. However, for the most part, the hedges would be retained and conditions could be used to sure appropriate ecological mitigation measures. With the above measures in place, I find that the proposal would have a neutral effect on the environmental dimension of sustainability.

33. Overall therefore, I find that the proposal would be sustainable development and would benefit from the presumption of sustainable development set out at Framework paragraphs 14 and 49.

Conditions

34. The Council has suggested a list of 23 conditions. Conditions specifying the approved plans are necessary in the interests of certainty. I have amended suggest condition 4 to include drawing number 5753.001 Rev H, which details the proposed access, since this matter is not reserved for further approval. A condition controlling the maximum number of dwellings is necessary to ensure that the development is consistent with the assessed scheme. A condition controlling the highways works associated with the development is necessary in the interests of highway safety. However, items c) (bus stops) and f) (travel

[6] Depending on which of the affordable housing options set out in the Planning Obligation is chosen by the Council

packs) of suggested condition 7 duplicate provisions in the UU and are, therefore, unnecessary.

35. The appellant considers that suggested conditions 8 and 9 should be amalgamated. However one deals with the treatment of surface water in the completed scheme and the other with surface water during the construction phase. Both are required, therefore, to avoid flooding. The requirements of suggested conditions 10 and 11 overlap. Therefore, I have omitted condition 11, but amended condition 10 to ensure that the surface water drainage Maintenance Plan is implemented.

36. Together, the provisions of the UU and the conditions should ensure that the development would proceed in an orderly fashion. As such, I am not persuaded that the phasing plan and programme required by suggested condition 12 is necessary and have omitted this condition. Conditions to ensure the implementation the landscaping reserved matter and the protection of trees during the construction phase are necessary to safeguard the character and appearance of the area.

37. A condition to secure the provision and implementation of an Ecological Mitigation Scheme and Management Plan is required in the interests of bio-diversity. A condition to secure the provision and implementation of a Construction Method Statement is required in the interests of highway safety and the living conditions of nearby occupiers.

38. Suggested conditions 17 (refuse storage and collection), 18 (lighting) and 19 (external materials) deal with items which would be considered at the reserved matters stage and are, therefore, not necessary. Conditions to secure an archaeological written scheme of investigation, completion of the archaeological fieldwork and post excavation analysis and reporting are required to protect the identified heritage resource.

39. Suggested condition 23 requires the provision of a fibre optic broadband connection. However, I have not been made aware of any local or national policy to justify this requirement. Therefore, I have not imposed this condition.

40. With these amendments I find that the remaining conditions meet the tests set in the Planning Practice Guidance.

Conclusion

41. For the reasons set out above, the appeal should be allowed.

Simon Warder

INSPECTOR

Schedule of conditions attached to
Appeal Ref: APP/P1560/W/16/3151169
Land west of Heckford's Road, Great Bentley, Colchester, Essex CO7 8RR

1) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

2) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

3) No development shall be commenced until plans and particulars of "the reserved matters" relating to the appearance, landscaping, layout and scale of the development 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.

4) The development hereby permitted shall be carried out in accordance with drawing numbers 04677.00009.16.005.3 and 5753.001 Rev H (subject to the requirements of condition 7 below).

5) The reserved matters shall be in general conformity with the submitted Parameters Plan Land Use, Density and Building Heights Plan, Drawing Number 04677.00009.16.007.2 dated October 2015.

6) The maximum number of dwellings to be contained in the development shall be 50.

7) No occupation of a dwelling shall take place until the following have been provided or completed:

   a) A priority junction off Heckford's Road to provide access to the proposal site as shown in principle on planning application drawing number 5153.001 Rev H with the exception of the kerbed radii which shall be 6 metres.
   b) Widening of Heckford's Road at its junction with the A133 and 2no. traffic islands with bollards and high level beacons at the right turn lane as shown in principle on planning application drawing number 5153.002 Rev D.
   c) A footway along Heckford's Road between the proposal site access and the Village Green as shown in principle on planning application drawing number 5153.001 Rev H with the exception of the section of footway south of the priority junction which shall be immediately adjacent the Heckford's Road carriageway.
   d) Improvements to the Public Right of Way which runs along the southern boundary of the proposal site (details shall be agreed with the Local Planning Authority prior to commencement of the development).

8) No works shall take place until a detailed surface water drainage scheme for the site, based on the approved drainage strategy, sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented prior to occupation of the first dwelling.

9) No works shall take place until a scheme to minimise the risk of offsite 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 works shall take place 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 agreed, in writing, by the Local Planning Authority. The surface water drainage scheme shall be operated in accordance with the agreed Maintenance Plan.

11) All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the landscaping details required to be submitted and approved under condition 3 above shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.

12) No development shall commence until details of tree protection measures, including during the construction phase, have been submitted to and approved in writing by the Local Planning Authority and such measures as approved shall be implemented fully in accordance with such requirements.

13) The development shall not 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.

14) No development shall take place before a Construction Method Statement for the development hereby approved has been submitted to, and approved in writing by, the Local Planning Authority. The demolition and construction works shall be carried out in accordance with the approved method statement.

    Details submitted in respect of the Method Statement, incorporated on a plan, shall provide for wheel cleaning facilities during the excavation, site preparation and construction stages of the development. The Method Statement shall also include details of the loading and unloading of plant and materials, hours of construction, dust suppression strategy, means of recycling materials, noise mitigation techniques, lighting to be used during construction showing light spill to neighbouring properties (with methods to be employed to prevent nuisance if required), the provision of parking facilities for contractors during all stages of the development (excavation, site preparation and construction) and the provision of a means of storage and/or delivery for all plant, site huts, site facilities and materials.

15) No development or preliminary ground-works shall commence until a programme of archaeological trial trenching has been secured and undertaken in accordance with a Written Scheme of Investigation, which has been submitted by the applicant, and approved by the Planning Authority. Following the completion of this initial phase of archaeological work, a summary report will be prepared and a mitigation strategy detailing the approach to further archaeological excavation and/or preservation in situ through re-design of the development, shall be submitted to and agreed in writing by the Local Planning Authority.

16) No development or preliminary groundwork shall commence on those areas of the development site containing archaeological deposits, until the satisfactory completion of archaeological fieldwork, as detailed in the agreed mitigation strategy,

17) Following completion of the archaeological fieldwork, the applicant shall submit to the Local Planning Authority a post-excavation assessment (within six months of the completion date, unless otherwise agreed in advance with the Planning Authority), which will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.