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## Appeal Decision

Site visit made on 4 January 2017

by **S J Lee BA(Hons) MA MRTPI**

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

Decision date: 25<sup>th</sup> January 2017

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**Appeal Ref: APP/P1560/W/16/3158558**

**The Cottage, Broad Lanes, Elmstead, Essex CO7 7HA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Bill Marshall against the decision of Tendring District Council.
  - The application Ref 16/00055/FUL, dated 14 January 2016, was refused by notice dated 14 March 2016.
  - The development proposed is 4 no dwellings (following demolition of existing three bedroom detached dwelling and detached garage).
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Part E of the appellant's appeal form indicates the description of the development changed from that stated on the application form. I am satisfied that the Council considered the application on this basis and the one used provides a clearer and more accurate description of the development than that on the application form. For the avoidance of doubt, the description in the heading above uses the revised description.
3. The Council has confirmed it is not able to demonstrate a five year supply of deliverable housing sites (HLS), as required by the National Planning Policy Framework (the Framework)<sup>1</sup>. As a result, all relevant policies for the supply of housing in the Tendring District Local Plan (LP) (2007) are considered to be out-of-date. In these circumstances, the presumption in favour of sustainable development means planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted<sup>2</sup>. I have considered the appeal on this basis.
4. The Council have referred to policies from the Tendring Local Plan: Proposed Submission Draft (2012) as amended by the Tendring District Local Plan: Pre-Submission Focussed Changes (2014) in their reasons for refusal. I have been provided with no information as to the progress of these documents, and the 'Plan Progress Document' submitted with the appeal suggests the emerging Plan for Tendring is the 'Tendring District Local Plan 2013-2033 and Beyond

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<sup>1</sup> See Paragraph 47 of the Framework

<sup>2</sup> See Paragraph 14 of the Framework

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Preferred Options Consultation Document’. As such, I have given the policies referred to little weight in my decision and have not referred to them below.

## **Main Issues**

5. The main issues are:

- (a) Whether the location would provide acceptable access to everyday local facilities, by a range of modes of transport; and
- (b) The effect of the development on the character and appearance of the area.

## **Reasons**

### *Access to facilities*

- 6. The appeal site lies within a small group of dwellings located just off the B1027 Brightlingsea Road. The site comprises of an existing two storey detached dwelling and outbuildings on a relatively generous triangular shaped plot, mainly given over to garden and amenity space. The site is outside any defined settlements in the LP and thus for the purposes of local and national policy is considered to be in the open countryside.
- 7. There are no services or facilities within the immediate vicinity of the site and so it is inevitable that future occupants would have to travel beyond the settlement to meet their everyday needs. The appellant recognises that the majority of local services and facilities identified are beyond the ‘preferred maximum’ walking distance outlined in the ‘*Providing for Journeys on Foot*’ document referred to. Aside from the cycle route, a plant hire shop and the football club/tennis courts, all other services and facilities referred to are well over the 800m ‘acceptable’ distance. The route to the nearest settlement of Wivenhoe is both unpaved and unlit. When combining these factors with the distances involved, it is unlikely that walking to Wivenhoe would constitute a realistic or reasonable means of transport to access key services.
- 8. An alternative route over a public footpath to Elmstead Market has also been put forward as a possibility, but notwithstanding the distance of around 1km, I am not convinced this would constitute a realistic option for non-recreational walking trips, particularly in the winter months.
- 9. The information provided on bus services demonstrates there are reasonably frequent services available from Wivenhoe, and some limited level of provision from Elmstead Market. Nevertheless, the distance and poor nature of the routes to reach any associated bus stops means it is extremely unlikely that these services would be considered a realistic option for most future occupants. The appellant has suggested that occupants would have access to public transport via the community transport providers but these generally require some form of pre-booking and thus are not evidence of regular or easily accessible public transport options.
- 10. In terms of cycling, the distances would not necessarily be prohibitive, but again the nature of the routes to and from the site do not convince me that this would be seen as a particularly attractive form of transport for non-recreational trips. Therefore, while there may be some limited scope for accessing services by cycling, it is extremely unlikely public transport or walking would be seen as

reasonable or realistic options. As such, future occupiers would be reliant on the car for most day-to-day trips.

11. The site is outside a defined settlement and thus there would be clear conflict with saved LP policy QL1, which establishes a spatial strategy of delivering growth into larger urban areas and other defined settlements. The general thrust of the policy to focus development into areas with good access to services and facilities is broadly consistent with the principles of the Framework. The policy creates something of a blanket restriction outside defined settlements for which there is no provision within the Framework and which would be contrary to its objectives to boost significantly the supply of housing.
12. The Council acknowledges that as a result of their HLS situation, this policy is out of date and the requirements of the Framework are a significant material consideration. To be considered sustainable, the development must still adhere to the requirements of the Framework. Paragraph 55 is particularly important as it provides specific guidance on housing in rural areas. This states that to promote sustainable development, housing should be located where it will enhance or maintain the vitality of rural communities. The example given is where development in one village may support services in a village nearby. It also states that isolated homes in the countryside should be avoided unless it meets one of the 'special circumstances' listed. This approach fits into the core planning principle of supporting thriving rural communities.
13. It is not necessarily unusual or unacceptable to have to travel to access facilities in rural areas or for there to be a greater reliance on the car than in urban locations. This is reflected to an extent in paragraph 29 of the Framework. However, the Framework also makes it clear that the transport system needs to be balanced in favour of sustainable transport modes and people should be given a real choice about how they travel. In this case, I consider it extremely unlikely that future occupants of the development would be provided with reasonable or realistic travel choices to access everyday local facilities. Opportunities to maximise sustainable transport solutions will vary between urban and rural areas. When read as a whole, I do not consider that it is the Framework's intention to allow development in rural areas where choices are as limited as they would be here.
14. There is no definition of 'isolated' within the Framework. In the context of the guidance, the assessment of isolation cannot only be a consideration of whether there are other properties near to the appeal site but rather how well it relates to defined settlements, the level, proximity and accessibility of services and facilities and such things as whether the site has good access to public transport or is in a generally accessible location.
15. The development would be located next to a handful of other family homes and would not stand by itself. Nevertheless, these dwellings are not part of a village or defined settlement, the site relates poorly to existing services and facilities, is not well served by public transport and is unlikely to encourage trips to any great extent by walking or cycling. These factors all point to the proposal being considered 'isolated' within the context of Paragraph 55. There is no suggestion that the development would meet any of the 'special circumstances' listed for allowing such homes in the countryside.

16. I have noted the appellant's views on the sustainable construction and energy efficiency of the development. Nevertheless, I do not consider that the design of the development would meet the criteria for 'exceptional quality or innovative design'. This will be addressed under the second main issue.
17. The development would essentially constitute a marginal increase in sporadically located dwellings between settlements for which there is no provision within the Framework. The location and accessibility of this site in relation to nearby villages does not suggest a strong functional relationship that would be key to maintaining or enhancing the economic vitality or viability of any nearby settlement. The likely dependency on the car would mean there would be no functional link or connection between the development and any particular settlement or set of services. Therefore, the benefits to the vitality of any individual settlement in the context of paragraph 55 would be negligible.
18. In conclusion, I find the site would not provide adequate access to everyday facilities by a range of means of transport. While it carries limited weight, the development would still conflict with saved LP policy QL1 which seeks to meet housing needs in the most sustainable and accessible locations. The underlying principle of managing growth toward accessible locations and accords with national policy. Thus I consider the development would conflict with the requirements of the Framework in terms of managing patterns of growth in order to make the fullest possible use of public transport, walking and cycling and locating development where it can maintain or enhance the vitality of rural communities.

#### *Character and appearance*

19. The development would result in four generally identical homes arrayed along, but set back from, Broad Lanes. Each would be served from its own access, though plots 1, 3 and 4 would utilise existing openings in the boundary of the site. The dwellings would be roughly square in form with a steep sided flat crown roof. Two roof slopes would include three dormer windows, with the others incorporating a roof light. The scale and profile of the roof would result in a low eaves height and a considerable overhang.
20. There is no architectural uniformity between the dwellings in the immediate vicinity of the site and this variety is essentially what establishes the character of the area. Both parties accept the design of the dwellings include some unusual characteristics, including a large overhanging roof and dormer windows in two of the steep roof slopes. While this may be considered necessary to reduce heat loss, the height, scale and profile of the roof would give the dwellings a relatively squat, blocky and top heavy appearance. This would have a detrimental impact on the appearance of the site and would not represent a high standard of design. The dormer windows would also be relatively large and unattractive features that would accentuate the dominance of the roof structure.
21. One nearby building is square in shape and has some similarity in terms of roof profile with the development. It would differ from the proposed dwellings in height and also had a greater degree of articulation and variation in the roofline, which helps to break up the bulk of the building. I do not consider that this house establishes a design context for the development. As such, while there is some variety in the architecture of houses in the area, the nature

- of the design would render the development somewhat uncharacteristic of the generally more traditionally styled dwellings in the area.
22. The new row of dwellings would introduce a uniformity of design which is not currently present in the area. The appellant has suggested a variety of finishing materials can be used on the walls and roof to provide some contrast, but this would not disguise the clearly uniform shape, scale and form of the dwellings. The uniformity and resulting uncharacteristic appearance of development would not be in keeping with the intrinsically rural character of the area or the more organic and amorphous group of dwellings in the vicinity of the site. While it would not be a large development, it would still create a degree of inappropriate suburbanisation in this location.
  23. From the main road, it is likely that only the roofs of the dwellings would show above the landscaping surrounding the site. Nonetheless, these would still appear as relatively large and prominent structures in their own right, which would not complement the low density and verdant rural character of the area when seen from this vantage point.
  24. The mature landscaping that exists around the site helps to reinforce the local character of the area. The majority of this would remain, particularly along the boundary with Brightlingsea Road. However, some hedgerow would be lost to allow for improved visibility. There are some existing breaks in the hedgerow for access points and areas of hard standing and driveway associated with the other dwellings on Broad Lanes. The development would not be completely uncharacteristic of the area in this regard. The appellant has also suggested new landscaping and sympathetic materials could be required by condition. This would provide a degree of mitigation. As such, while the removal of the hedgerow would have something of a detrimental impact on the street scene, I do not consider that it would cause material harm in its own right and could be addressed by an appropriate planning condition. This does not, however, alter my concerns over the overall impact of the development.
  25. The Framework states that planning decisions should not attempt to impose architectural styles or particular tastes and should not stifle innovation, originality or initiative. It also states that planning permission should not be refused for buildings which promote high levels of sustainability because of concerns about incompatibility with an existing townscape if those concerns have been mitigated by good design.
  26. In requiring high quality design development the Framework also expects development to respond to local character and history, be visually attractive and add to the overall quality of the area. The development would provide a range of environmental and energy efficient measures, including solar devices to harvest and store energy, electric vehicle charging points, sedum roofs, rainwater harvesting, storage and filtering measures, design features to reduce heat loss and an energy efficient construction technique and materials. However, in this case I do not consider the criteria for good design have been met, and the exceptions set out in the Framework would not apply.
  27. As noted above, the development does not meet the design requirements of paragraph 55 of the Framework. Notwithstanding the sustainability measures included, the development would not be truly outstanding or innovative. Moreover, for the reasons already given, the development would not reflect the

highest standards of architecture, enhance the immediate setting or be sensitive to the defining characteristics of the local area.

28. I find the development would cause material harm to the character and appearance of the area by virtue of the uncharacteristic and poorly considered design and the resulting uniform appearance of the development. Accordingly, there would be conflict with saved LP policies EN1, QL9 and QL11 which seek, amongst other things, to ensure development makes a positive contribution to the quality of the local environment, is appropriate to the scale and nature of its locality and the character of settlements. It would also conflict with paragraph 64 of the Framework insofar as the development would be of a poor design that fails to take the opportunity to improve the quality of the area.

#### *Planning balance*

29. Paragraph 7 of the Framework identifies the three dimensions of sustainability as economic, social and environmental. All three must be considered with regard to the presumption in favour of development.
30. The provision of an additional three dwellings would be make a small contribution to the Council's acknowledged shortfall in housing supply. Investment in construction and related employment would be an associated benefit, but the temporary nature of this carries little weight.
31. The energy efficient nature of the development and sustainable construction methods are consistent with the environmental dimension of the Framework, particularly in terms of using natural resources prudently, minimising waste, mitigating and adapting to climate change and moving toward a low carbon economy. However, the likely reliance on the private motor vehicle, the least sustainable mode of transport, creates a conflict with the same environmental objectives of the Framework.
32. The development would provide a small amount of additional expenditure to support services, but the poor relationship and lack of accessibility to day-to-day facilities weighs against the development in terms of the social dimension of sustainable development. The location of the site also relates poorly to the economic role of ensuring development takes place in the right locations.
33. The appellant has argued that the site would utilise previously developed land (PDL). Annex 2 of the Framework defines only gardens in built-up areas to be outside the PDL definition. I am satisfied, therefore, that the appeal site would fall under the definition of PDL and this would provide a small benefit. However, I have also concluded that the development would have a significantly harmful impact on the character and appearance of the area in conflict with the environmental dimension of sustainability.

#### *Other matters*

34. The appellant has drawn my attention to three appeal decisions within the District which he considers relevant to this development. Having considered each decision letter, it is clear that these cases do not represent directly comparable circumstances with those which apply in this appeal. In all three cases, the Inspector concluded that the appeal site either had good access to facilities and/or reasonable access to alternatives to the private motor vehicle. This is not the case here and thus the circumstances are different. In one

appeal, the scheme was for considerably more dwellings than are being considered here and clearly does not represent a comparable form of development to that before me.

35. I have also noted the statements in support of the development. However, these are not sufficient to outweigh my concerns with the location or design of the development.

### **Conclusion**

36. In this case, I find the adverse impacts identified would significantly and demonstrably outweigh the benefits of the development when assessed against the policies of the Framework when taken as a whole. The proposal would not, therefore, represent sustainable development.
37. Whilst the policies breached relating to the housing supply are out of date, the proposal would nevertheless be contrary to the development plan and this conflict would not be outweighed by other material considerations, including the provisions of the Framework and paragraph 14 in particular. Therefore the appeal should be dismissed.

*S J Lee*

INSPECTOR