
Appeal Decision

Site visit made on 28 March 2017

by Joanne Burston BSc MA MRTPI

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

Decision date: 09.05.2017

Appeal Ref: APP/P1560/W/16/3164552

Elm Farm, Little Clacton Road, Clacton-on-Sea CO16 8DZ

- 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 Robinson & Hall LLP against the decision of Tendring District Council.
 - The application Ref 16/00740/OUT, dated 4 May 2016, was refused by notice dated 10 August 2016.
 - The development proposed is an outline planning application with all matters reserved for residential development of 14 bungalows.
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Decision

1. The appeal is allowed and planning permission is granted for an outline planning application with all matters reserved for residential development of 14 bungalows at Elm Farm, Little Clacton Road, Clacton-on-Sea CO16 8DZ in accordance with the terms of the application, Ref 16/00740/OUT, dated 4 May 2016 subject to the conditions set out in the annex to this decision.

Procedural Matters

2. The application is in outline with all matters reserved but the submitted planning application explains that the proposal includes the demolition of the agricultural buildings on the appeal site. Furthermore, it sets out that up to 14 dwellings, consisting of single storey houses could be accommodated on the site. I have dealt with the appeal on that basis.
3. An executed planning obligation is before me, dated 22 December 2016, which the Council considers overcomes its concern with regard to the provision of new or improved off-site open space and play facilities. On this basis the Council agreed that reason for refusal 2 has fallen away. Planning obligations are a material consideration and this is a matter to which I will return later in this decision.
4. An appeal decision at the same location as the appeal now before me has been brought to my attention. I have taken account of the previous Inspectors findings¹ in determining this current appeal. However, the development now proposed is different to that considered under the previous appeal, primarily because it would result in a residential development of up to 14 bungalows rather than up to 25 dwellings, of predominately detached two-storey houses.

¹ Appeal reference APP/P1560/A/14/2215652

Main Issue

5. The main issue in this case is whether the proposed development would promote sustainable patterns of growth having particular regard to the character and appearance of the area.

Reasons

Background

6. Although close to existing development, the appeal site sits outside the settlement boundary and therefore Policy QL1 of the Tendring District Local Plan 2007 (Local Plan) is pertinent as it directs new development to sites within defined settlement development boundaries. Nevertheless, Local Plan Policy QL1 and other Local Plan housing policies are time expired because the housing policies only cover a period up until 2011. Furthermore, the Council cannot demonstrate a five year housing land supply, and thus paragraphs 49 and 14 of the National Planning Policy Framework (the Framework) are engaged.
7. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. Nonetheless, the approach taken by Local Plan policy QL1 to promote and direct growth to the borough's larger settlements is broadly consistent with Framework's approach to sustainable development. Accordingly, Local Plan Policy QL1 should be afforded moderate weight in my decision.
8. In such circumstances, that the site lies outside the settlement boundary is not sufficient reason on its own to dismiss the appeal, the proposal has to be considered on its merits in the light of the presumption, stated in the Framework, in favour of sustainable development. This means, for sustainable development proposals, that permission should be granted unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework taken as a whole.
9. Additionally, the Council is working towards a new Local Plan entitled the "*Tendring District Local Plan 2013 – 2033 and Beyond Preferred Options Consultation Document*" (eLP). However, the Council states that the eLP has not yet been formally adopted, and thus cannot be afforded anything other than limited weight at the current time. From the evidence before me in this case I see no reason to disagree.

Sustainability

10. Sustainability is not just about distance to services. The Framework advises at paragraph 7 that there are three dimensions to sustainability: economic, social and environmental.
11. The appeal site is an L shaped area of some 0.80 hectares adjacent to the back gardens of houses on the north and west sides of Cleave Close. The site is currently occupied by a group of agricultural barns and buildings. To the west and south of the barns the site encloses the irregularly shaped north east corner of a field. Access into the site is taken from Little Clacton Road and is shared with Elm Farm House. Elm Farm House lies to the immediate north of the appeal site.

Environmental dimension

12. The appeal site is close to existing development and that development is clearly seen from it, and has an urbanising effect. Whilst the appeal site makes some contribution to the generally rural landscaped setting of the local area, that contribution is limited by this factor. Furthermore, the appeal site is not subject to any formal landscape designations. No evidence is before me to demonstrate that it has physical attributes to make it 'valued', such that bullet point one of paragraph 109 of the Framework is not engaged.
13. It is clear that the rural ambience of the appeal site would change and in this regard some harm would arise. However, I have identified that the appeal site makes a limited contribution to the rural landscaped setting of the local area which limits the harm identified. Further, the appeal development would relate well to the built up area of Clacton-on-Sea and a proportion of the proposed dwellings would be contained within the area where the existing agricultural barns are located. The illustrative site plan also indicates that the proposed development could include additional planting and landscaping, which would likely result in a positive impact on the quality and diversity of the area.
14. In terms of its visual effect, it would be contained by planted boundaries and existing mainly residential development to the south, such that many views to it would be limited by those elements. In close range views the proposed development would change the appearance of the appeal site, and the views experienced by those occupiers of properties that border it. However, the illustrative layout submitted with the appeal application, through its layout and the provision of planted boundaries and private gardens near those properties, gives me assurance that the proposed development could be carried out without significantly affecting those occupiers outlook.
15. In longer range views the appeal proposal would be seen against the backdrop of existing development and would all be limited by existing planting and mitigated by distance. Views from the open countryside to the north would be interrupted by existing development and planting, such that the visual impact would be minor and could be overcome by appropriate design and layout. These matters could be controlled at reserved matters stage.
16. All in all, the appeal development would encroach into the open countryside. However, the appeal site makes a limited contribution to the rural landscaped setting of the surrounding area. The appeal development, therefore, would not significantly adversely affect the settlement's rural landscape setting and would be close to existing development. It would have minor visual impacts, which would be localised, which could be overcome through mitigation planting and through appropriate design, which could be controlled at reserved matters stage. Overall, limited material harm to the character and appearance of the open countryside would result, which would bring the scheme in to conflict with Local Plan Policies QL9 and EN1. These Policies seek, amongst other matters, to maintain or enhance local character and distinctiveness.
17. Third parties have raised concerns relating to the loss of protected trees on the appeal site. However, the Council's Tree and Landscape Officer has stated that none of the trees on the land merit protection by means of a tree preservation order. Furthermore, through the submission of a reserved matters scheme for landscaping, the Council can address the retention of existing vegetation and the potential for new planting where necessary.

Economic dimension

18. With regards to its economic benefits, it would provide some jobs in the construction industry as well as an increase in the local population, which would in turn bring added spending to the local economy and help to support local services and facilities.

Social dimension

19. In terms of social benefits, the site would make an important contribution to addressing the significant shortfall in housing land supply which currently exists within the area. It would assist in meeting housing needs and help to provide choice within the Clacton-on-Sea area. Furthermore, the site is accessible by a range of sustainable transport options, thus giving future occupiers a real choice about how they travel.
20. Concerns relating to highway safety have been brought to my attention. However, site access is a reserved matter and I note that the Highways Authority has not raised any objections, subject to conditions. From all that I have seen and read and without substantive evidence to the contrary I see no reason to disagree.
21. Neighbouring occupiers are also concerned that the proposal would harm their living conditions. A number of dwellings, which abut the southern and eastern boundary of the site, benefit from the tranquillity of the adjacent fields and enjoy pleasing and attractive rural views. However, the illustrative layout demonstrates that the new houses would be sited sufficiently far away to safeguard privacy, daylight and sunlight, and I see no reason why such a relationship should be unsatisfactory.
22. The balance in favour of the environmental dimension of sustainable development is not as apparent as the economic and social dimensions. Clearly the benefits of the development have to be set against the loss of open countryside, leading to a change in the character and appearance of the area. This harm is a matter to be weighed in the final balance against the benefits of the proposal.

Other matters

23. The Council have also raised concerns that the proposal would be an unplanned and premature development. In this respect I acknowledge that the site is within an area allocated for mixed use development in the eLP known as 'Hartley Gardens'. Nonetheless, the appeal proposal would represent a relatively small part of the larger site and from the evidence before me I do not consider that the wider site allocation, promoted in the eLP, would be prejudiced by allowing the proposed development to go ahead. Taking on board the advice in the Planning Practice Guidance regarding prematurity, the emerging plan is not at an advanced stage and the proposed development would not be so substantial that it would undermine the plan making process.
24. Objectors have commented on land ownership issues. Nonetheless, matters relating to private access rights and land ownership fall outside the scope of the planning system and it would be inappropriate for me to comment on those matters within my decision.

Planning Obligation

25. An executed Unilateral Undertaking is before me. Whilst the Council has confirmed that it is broadly satisfied with its content, for its provisions to be given weight in the determination of this appeal, I am required to assess whether they are necessary to make the proposed development acceptable in planning terms, directly related to the proposed development and fairly and reasonably related in scale and kind.
26. The obligation would secure the payment of a contribution towards public open space and would be used for enhancement at the Bockings Elm play area to the rear of 445 to 463 St. John's Road, Clacton. To my mind the contribution is necessary and reasonable given the size of the development and would comply with the Development Plan. The contributions sought therefore meet the statutory tests.
27. I note that the Council has raised concerns that the obligation enables the repayment of unspent funds after 5 years of its deposit to the Council, whereas the Council's preferred approach is a 20 year spend period. Whilst the Council's concern is noted, it does not affect my consideration of the open space contribution because the deed is a Unilateral Undertaking whereby obligations can only be given to the Council.
28. In any event, the Council has identified where the contribution would be spent and I have no evidence as to any potential delays which would result in the contribution not being spent within the five year period. Furthermore, there is no justification to support the Council's approach particularly in light of the tests set out under Regulation 122 of the Community Infrastructure Levy and paragraph 204 of the Framework.

Planning balance

29. Bullet point 4(1) of paragraph 14 of the Framework is engaged because I have found that the Council cannot demonstrate that it has a five year supply of housing. Paragraph 14 of the Framework states that a presumption in favour of sustainable development exists and should be seen as a golden thread running through decision-taking. Where the development plan is absent, silent, or relevant policies for the supply of housing are out-of-date, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
30. I have found that there would be limited harm to the character and appearance of the locality, thus contrary to Local Plan Policies EN1 and QL9, to which I attach moderate weight. Further, whilst I have found that there would be a Local Plan conflict with Policy QL1, matters that reduce the weight that I accord that Local Plan conflict have been identified.
31. I have found that the appeal proposal would have a beneficial effect on the supply of housing to which I accord significant weight and no substantive evidence is before me to demonstrate that it would, in itself, adversely affect development in the area. To the other social and economic benefits identified, I also accord moderate weight.

32. Whilst I acknowledge that the Inspector in dealing with an appeal² at this same location came to a different conclusion I am unaware of the information that was before him. In consequence I have judged this case on its own merits.
33. All other matters raised during the appeal have been considered but they do not lead me to any conclusion other than that overall, whilst recognising the priority given to the plan-led approach, the adverse impacts of the scheme would not significantly and demonstrably outweigh the benefits and the proposed development would be sustainable. Therefore the appeal should be allowed.

Conditions

34. In imposing conditions I have had regard to the Council's suggested conditions, to the tests in paragraph 206 of the Framework and the relevant sections of the Planning Practice Guidance.
35. A number of the conditions require submission of details of reserved and other matters and the timing of development, all of which are necessary to ensure the development is carried out appropriately. In respect of highway safety, it is necessary to ensure that detailed plans are provided of the site access, estate roads, junctions, visibility splays, footways, parking, garage and turning facilities. A condition to ensure the submission and implementation of a residential travel plan is necessary in the interests of encouraging the use of sustainable modes of transport. To ensure that development of the site does not create a risk of flooding across adjoining areas, it is necessary to ask for details of the drainage arrangements and porous paving to be submitted for detailed approval as set out in the Council's conditions 9 and 14. There is the likelihood that the scheme could disturb local ecological interest on and around the site and it is therefore appropriate to require compliance with the conclusions and recommendations identified in the Extended Phase 1 Habitat Survey.

Overall Conclusion

36. For the above reasons, and taking all matters raised into consideration including the previous appeal decision, I conclude on balance that the appeal should be allowed subject to the conditions listed in the Annex to my decision.

Joanne Burston

INSPECTOR

² Appeal ref: APP/P1560/A/14/2215652

Annex

Conditions 1 to 15 attached to appeal decision APP/P1560/W/16/3164552

- 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 three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place, including any ground works or demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - 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; and
 - iv) wheel and under-body washing facilities.
- 5) Prior to the commencement of the proposed development detailed plans drawn to an engineering scale of the proposed means of access to the site accompanied by a Stage 1 Road Safety Audit (RSA) and detailing any mitigation measures as found necessary shall be submitted to and approved in writing by the local planning authority.
- 6) No dwelling shall be occupied until space has been laid out within the site, including garages and car ports, for cars to be parked and that space shall thereafter be kept available at all times for the parking of vehicles by the occupants of the dwellings and for their visitors and for no other purpose in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
- 7) Any garage provided with its vehicular door facing the highway or proposed highway shall be sited a minimum of 6m from the highway boundary.
- 8) Prior to commencement of the proposed development, a vehicular turning facility for service and delivery vehicles of at least size 3 dimensions and of a design which shall be approved in writing by the local planning authority, shall be provided within the site and shall be maintained free from obstruction at all times for that sole purpose.
- 9) Prior to the proposed means of access(s) being brought into use, details of the construction and future maintenance of the necessary bridging or piping of the drainage ditch/watercourse shall be submitted to and approved in writing by the local planning authority.

- 10) Prior to the commencement of development, details of the estate roads and footways (including layout, levels, gradients, surfacing and means of surface water drainage) shall be submitted to and approved in writing by the local planning authority.
- 11) The carriageway(s) of the proposed estate road(s) shall be constructed up to and including at least road base level, prior to the commencement of the erection of any dwelling intended to take access from that road(s). The carriageways and footways shall be constructed up to and including base course surfacing to ensure that each dwelling, prior to occupation has a properly consolidated and surfaced carriageway and footway between the dwelling and the existing highway. Until final surfacing is completed, the footway base course shall be provided in a manner to avoid any up-stands to gullies, covers, kerbs or other such obstructions within or bordering the footway. The carriageways, footways and paths in front of each dwelling shall be completed with the final surfacing within twelve months from the first occupation of such dwelling.
- 12) Each internal estate road junction shall be provided with a clear to ground level visibility splay with dimensions of 25m by 2.4m by 25m on both sides. Such visibility splays shall be provided before the road is first used by vehicular traffic and shall be retained free from obstruction at all times.
- 13) Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Plan including the initial commitments; and amended and supplemented under the provisions of a yearly report. The Residential Travel Plan to 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.
- 14) All new driveways and parking areas shall be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwelling.
- 15) The development shall be carried out in strict accordance with the Conclusions and Recommendations detailed within the Extended Phase 1 Habitat Survey (Great Crested Newt Survey) Reference DFCP 3019 (specifically paragraphs 5.2.2, 5.2.3, 5.2.4, 5.3.2, 5.3.3, 5.4.2, 5.5.2, 5.6.1, 5.6.2 and 5.6.3).

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