

Appeal Decision

Site visit made on 13 June 2017

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

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

Decision date: 18 July 2017

Appeal Ref: APP/P1560/W/17/3168892

Land known as the Brambles, St Michaels Road, Thorpe le Soken CO16 0EJ

- 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 and Mrs Andy Joslin and Mr David C Haws against the decision of Tendring District Council.
 - The application Ref 16/01386/OUT, dated 30 August 2016, was refused by notice dated 26 October 2016.
 - The development proposed is residential development of 0.30ha of land to provide 2 detached dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for residential development of 0.30ha of land to provide 2 detached dwellings at land known as the Brambles, St Michaels Road, Thorpe le Soken CO16 0EJ in accordance with the terms of the application, Ref 16/01386/OUT, dated 30 August 2016, subject to the conditions set out in the attached schedule.

Applications for Costs

2. Applications for costs were made by Mr and Mrs Andy Joslin and Mr David C Haws against Tendring District Council and Essex County Council. These applications are the subject of a separate Decision.

Preliminary Matters

3. All matters are reserved for further approval. The application included an Indicative Layout Plan (drawing number 5569_D) which shows two detached dwellings. I have had regard to this plan in my determination of the appeal.
 4. The application form gives the site address simply as St Michael's Road. However, in order to more clearly identify the site, in the heading and formal decision above, I have used the address given on the appeal form and decision notice which adds 'Land known as the Brambles'.
 5. The first reason for refusal cites conflict with policies SPL3 and PPL3 of the emerging Tendring District Local Plan (EDP). Since the application was determined the Council has issued the Publication Draft of the EDP for consultation. Paragraph 216 of the National Planning Policy Framework (the Framework) advises that more weight may be given to emerging development plan policies as they advance in preparation. It also states that the weight given to emerging policies depends upon the extent to which there are unresolved objections. I have not been made aware of whether there were unresolved
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objections to the earlier or current versions of the cited policies. Consequently I can give no more than moderate weight to those policies.

Main Issues

6. The main issues are the effects of the proposal on:

- the character and appearance of the area with particular regard to protected trees;
- highway safety on the surrounding network and nearby bridleway.

Reasons

Character and Appearance

7. Policy QL9 of the Tendring District Local Plan 2007 (LP) requires development to protect or enhance local character by, among other things, respecting views and incorporating important existing site features of the landscape. Policy EN1 seeks to protect the District's distinctive landscape character, including features such as the settings of settlements and the traditional character of rural lanes and footpaths. Policies SPL3 and PPL3 of the EDP have similar objectives.
8. Although a caravan was located on appeal site at the time of my visit, the land is essentially free from built development and, for the most part, laid to grass. It is partially divided by a group of substantial trees and further trees mark the rear boundary of the southern part of the site. Within these groups, a total of 13 oak trees are protected by Tree Preservation Order¹ (TPO T2 and G2) and an ash tree in the south-west corner of the site is similarly protected (TPO T1). Established hedgerows define the southern, and part of the western (roadside) boundaries.
9. A Tree Survey and Constraints Plan² (TS) was submitted with the application. It assesses the age and condition of the trees, defines crown spreads and root protection areas and makes recommendations for works to the trees. The consultation response from the Council's Tree and Landscape Officer disagrees with the TS with regard to the condition of T1 and advises that the recommended works to this tree are not required to implement the proposal, but should be the subject of a separate application. Nevertheless, the response does not take issue with the remainder of the TS and finds that it may be possible to implement the proposed development based on the indicative plan without compromising the root protection areas. I saw on my visit that the site is large enough to accommodate two reasonably sized dwellings without impinging on the protected trees. As such, I agree with the Tree and Landscape Officer's response in this regard.
10. The planning officer's report alleges that the proposal would impact negatively on the protected trees and this repeated in a letter from the planning officer dated 25 April 2017. However, this approach is not supported by the Tree and Landscape Officer's consultation response or any other substantive evidence.
11. The Council's evidence also considers that the proposal would cause considerable harm to the character and appearance of the area and may set a precedent for similar developments in the vicinity. There is no supporting analysis of the

¹ TPO No 22/91 as amended

² Hayden's Arboricultural Consultants Ref 5568 dated 22/08/2016

character of the area or the effect of the proposal on it. Nor is there anything to suggest that the local landscape is subject to any protective designations.

12. The appeal site has a manicured appearance and is fairly well contained by substantial planting on its own boundaries and the boundary enclosures of the land immediately to the north. That land is used to keep horses and is enclosed by planting and fencing. The land to west of the site appears to be part of a domestic garden. As such, I consider that the vicinity of the appeal site has an urban fringe character. This is consistent with the description in the quotation from the Council's 2001 Landscape Character Assessment set out in the appellant's statement.
13. The erection of the proposed dwellings and associated access and boundary enclosures would extend built development further north. However, it would appear as continuation of the existing linear pattern of settlement along St Michael's Road and would be fairly effectively enclosed by established planting. I have already concluded that buildings on the scale indicated in the application could be accommodated within the site. The provision of vehicular access and associated visibility splays³ would result in the loss of part of the roadside boundary hedge. However, retention and reinforcement of the remainder of the hedge and other boundary planting could be secured by condition. Therefore, although short range views of the development would be available from St Michael's Road, medium and longer range views, including those from the bridleway running north from the site, would be very limited.
14. Consequently, whilst the proposal would, inevitably, bring about a localised change to the character of the site, I consider that its effect on the wider landscape would be negligible. The appearance of the development is reserved for further approval and there is no reason to suppose that an appropriate scheme could not be achieved. As such, I find that the proposal would have a minor negative impact on the character and appearance of the area, although it would not adversely affect the protected trees. It would, therefore, conflict with LP Policies QL9 and EN1 and EDP Policies SPL3 and PPL3 to a very limited degree.
15. The appeal site is located to the north of the established residential development in St Michael's Road and is just outside of the settlement boundary as defined in the LP. The reasons for refusal do not allege conflict with any spatial strategy or settlement hierarchy policies. However, in a letter dated 28 April 2017, the planning officer refers to LP Policy QL1 which sets out the settlement hierarchy for the District and, among other things, states that development will be concentrated within defined settlement boundaries.
16. My attention has been drawn to an appeal decision⁴ which found that moderate weight could be accorded to LP Policy QL1 on the basis of its consistency with the Framework's the approach to sustainable development and a relatively small shortfall in the District's five year housing land supply (4.4 years supply). The Council does not provide substantive evidence to dispute that a shortfall exists, although neither party has sought to quantify it in this case. However, as the cited appeal decision is relatively recent, and in the absence of any evidence to the contrary, I am inclined to concur that Policy QL1 should be accorded only moderate weight. Given the site's location adjacent to the settlement boundary

³ The local highway authority advises that splays of 2.4 x 17m are required.

⁴ Appeal reference APP/P1560/W/16/3159703

and the minor impact of the proposal on the character and appearance of the area, the conflict with this policy would be very limited.

17. I have considered the local planning authority's argument that the grant of planning permission would set a precedent for similar developments. However, no directly comparable sites to which this might apply have been put forward in relation to character and appearance matters. Each proposal must be considered on its merits and a generalised concern of this nature does not justify withholding permission in this case.

Highway Safety

18. Access to the site would be via St Michael's Road with access to the public highway network at Colchester Road via St Michael's Road, The Crescent or Vicarage Lane. These roads are classified as Private Streets and are loose-surfaced. The St Michael's Road and Vicarage Lane junctions with Colchester Road in particular have restricted visibility. However, none of the roads are through routes and the volume of traffic they serve appears to be low. Furthermore, traffic speeds are low. Although the roads are narrow in some places, in other places they widen out and/or have grass verges. As such, there are regular opportunities for vehicles traveling in opposite directions to pass one another. Whilst the section of Vicarage Lane approaching the Colchester Road junction is narrow, there is a passing place within a reasonable distance of the junction. This should avoid the need for vehicles turning into Vicarage Lane being required to reverse into Colchester Road in the event of a vehicle approaching from the opposite direction.
19. The local highway authority has expressed concern regarding the effect of the proposal on the bridleway and the routes leading to Colchester Road, particularly having regard to their use by horses, cyclists and pedestrians, as well as vehicles. However, there is no evidence of safety problems for any road users on these routes or at their junctions with Colchester Road.
20. Neither party has provided evidence on trip generation, although the proposal for two dwellings is unlikely to generate a significant volume of additional traffic. Moreover, whilst I recognise that the route to the public highway network via Vicarage Lane would be most convenient for trips in the direction of Colchester and the A12 and A120, the two other junctions would provide alternatives and help to dissipate the low volume traffic generated by the proposal.
21. The local highway authority has also expressed concern regarding visibility at the junction of St Michael's Road and Vicarage Lane. However, since the photographs in its statement were taken, the high hedge at this junction has been replaced with lower level planting which is set back from the road. Whilst this planting may grow over time, given the low traffic speeds and volumes in the area, I am not persuaded that the visibility available at this junction poses a risk to highway safety.
22. The local highway authority also contends that intensification of use of the roads would place a maintenance burden on the authority. However, at paragraph 3.3 of its statement, it confirms that Private Streets are not maintainable at public expense. In any, event, I have already concluded that the number of additional movements generated by the proposal is likely to be low. The additional wear and tear on the road would be correspondingly low. This, and any damage

during the construction period, would be a private matter for the parties involved.

23. Consequently, I find that the proposal would not be harmful to highway safety and would not inconvenience users of the adjoining bridleway. Consequently, it would not conflict with LP Policies TR1a or QL10 to the extent that they seek to prevent hazards and inconvenience on the highway network and require development to provide safe and practicable site access. Nor would the proposal conflict with the County Council's Development Management Policies DM1 or DM2 insofar as they have similar aims or Policy DM11 which seeks to safeguard public rights of way where they are affected by development.
24. The local highway authority also argues that allowing the proposal would set a precedent for further development and has identified land to the north of the appeal site in this regard. However, the size and physical setting of that land is very different from the appeal site. I have already found that each proposal must be treated on its merits. It seems to me that the considerations in any planning decision in respect of the land identified by the local highway authority would not be same as those in this case and, therefore, my decision does not set a precedent for development of the land to the north.
25. Reference has been made to three appeal decisions in connection with the concern over precedent. These are all in a different local authority area where different development plan policies apply. Moreover, based on the information provided, only one⁵ appears to deal with the issue of precedent. In contrast to the current situation, the Inspector in that case did find that there were comparable local sites to which the concern over the impact of additional traffic could apply. The cited appeal decisions do not, therefore, lead me to find that the proposal would set an unwelcome precedent.

Other Matters

26. There is no substantive evidence to show that the appeal site supports protected species or habitats and the size of the site falls below the threshold at which Environmental Impact Assessment is required. Nor has it been adequately demonstrated that the site could not be provided with a satisfactory drainage system.
27. Whilst I understand that there are other housing proposals in Thorpe le Soken, the provision of two additional houses at the appeal site is unlikely to put a significant strain on local services or facilities.

Conditions

28. The local planning authority has suggested a list of five conditions. With amendments for clarity, I find that they meet the tests set out in the Planning Practice Guidance. I have amended suggested condition 3 to reflect the fact that the application was made in outline with all matters reserved. However, a condition requiring the reserved matters to accord with the submitted Indicative Layout Plan is necessary to define the scope of the permission and ensure that it is consistent with the proposal considered in this appeal.
29. Whilst landscaping is a reserved matter, a condition dealing with the particular requirements in this case is necessary in order to safeguard the character and

⁵ Appeal reference APP/A1530/A/09/2102789

appearance of the area. A condition requiring the provision and retention of parking and turning facilities is necessary to ensure highway safety.

30. The local highway authority has suggested a further list of conditions. I will impose the condition requiring the provision of visibility splays at the proposed access to ensure highway safety. The local planning authority considers that the appeal site is sustainably located and there is nothing in the highway authority's evidence to indicate otherwise. Therefore, the suggested condition requiring a sustainable transport mitigation package is not necessary. The element of the suggested condition requiring the route between the site and Colchester Road to be re-surfaced following completion of the construction phase appears to require works on land outside the control of the appellant or the local highway authority. Such a condition would be unenforceable and, therefore, unreasonable. To the extent that the other suggested conditions are necessary, those matters can be dealt with at the reserved matters stage.

Planning Balance and Conclusion

31. The Council's initial appeal submissions accepted that it cannot demonstrate a five year housing land supply. Whilst it has subsequently advised that the emerging EDP seeks to address that matter, that plan's housing provisions have yet to be examined. On the basis of the available evidence therefore, I am not persuaded that a 5 year housing land supply exists. Paragraphs 49 and 14 of the Framework requires housing applications to be considered in the context of the presumption in favour sustainable development. Moreover, paragraph 47 seeks to significantly boost the supply of housing and paragraph 50 seeks a wide choice of high quality homes.
32. Paragraphs 7 and 8 require the economic, social and environmental roles of sustainability to be considered together. The proposal would make a positive, albeit modest, contribution to the shortfall in the supply of deliverable housing land in the District. The Council accepts that the site is sustainably located and future residents could be expected to support the reasonable range of local facilities and services available in Thorpe le Soken. The proposal would, therefore, make moderate contributions to the social role.
33. The proposal would also provide economic benefits through job creation and additional expenditure during the construction phase. With regard to the environmental role, the appeal site is located outside of the defined settlement boundary and I have found that the proposal would result in a minor negative impact on the character and appearance of the area. Taken to together, I consider that the social and economic benefits of the proposal outweigh these minor environmental impacts.
34. Consequently, the proposal would amount to sustainable development and benefits from the presumption in favour of sustainable housing development at Framework paragraph 14. This presumption is sufficient to overcome the proposal's very limited conflict with LP Policies QL1, QL9 and EN1 and EDP Policies SPL3 and PPL3.
35. For the reasons set out above, the appeal should be allowed.

Simon Warder

INSPECTOR

Schedule of Conditions attached to

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Land known as the Brambles, St Michaels Road, Thorpe le Soken CO16 0EJ

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 reserved matters submissions required under condition 1 above shall accord with the layout and scale of development shown on Indicative Layout Plan drawing number 5568_D.
5. No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of hard and soft landscaping works for the site. The scheme shall include proposals for the retention and reinforcement of existing boundary planting, any proposed changes in ground levels and also accurately identify the spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS 5837: 2012 Trees in relation to design, demolition and construction". Development shall be carried out in accordance with the approved details.
6. Prior to occupation of the development hereby permitted, a vehicular parking and turning facility for motor cars for each dwelling, to a design which shall be first approved in writing by the local planning authority, shall be provided within the site. The approved parking and turning facilities shall be maintained free from obstruction in perpetuity.
7. Prior to occupation of the development hereby permitted 2.4m x 17m visibility splays measured from and along the highway boundary shall be provided on both sides of any access. The visibility splays shall be maintained free from obstruction in perpetuity.