The Planning Inspectorate

Appeal Decision

Site visit made on 12 September 2017

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

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

Decision date: 2nd November 2017

Appeal Ref: APP/P1560/W/17/3174843
Land East of Heckfords, Heckfords Road, Great Bentley

- 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 Stephen Williams of Hills Building Group against the decision of Tendring District Council.
- The application Ref 16/01999/OUT, dated 6 December 2016, was refused by notice dated 4 April 2017.
- The development proposed is a doctors surgery and 25 dwellings, associated infrastructure and landscaping.

Decision

1. The appeal is allowed and planning permission is granted for a doctors surgery and 25 dwellings, associated infrastructure and landscaping at Land East of Hecksford, Heckfords Road, Great Bentley in accordance with the terms of the application, Ref 16/01999/OUT, dated 6 December 2016, subject to the conditions set out in Appendix A.

Background and Main Issues

2. Planning permission was refused by the Council on three grounds. Firstly, the site lies outside of a settlement boundary, that the proposal would harm the character of the countryside, and be unsustainable. Secondly, that insufficient details of surface water drainage matters had been supplied. Thirdly, that a legal agreement under Section 106 of the TCPA had not been submitted securing infrastructure such as affordable housing.

3. At the time the decision was made the Council could not demonstrate a five year supply of deliverable housing sites. In its statement the Council stated that it considered that it could demonstrate a 'robust' five year supply. However, in October 2017 an appeal decision[1] was issued following an Inquiry, which found that the Council could not demonstrate a five year supply of housing land. Subsequently, the Council confirmed that it can only demonstrate a supply of deliverable housing sites for a period of 4.6 years.

4. The Council confirmed in its appeal statement that the second reason for refusal was no longer being contested given that the local lead flood authority had removed its holding objection. In section 1.5 of the Council's statement, the Council has identified what it considers the principal issues to be. I have considered all the evidence before in forming what I consider the main issues to be.

[1] Ref: APP/P1560/W/17/3169220

5. The main issues therefore are:

   i) Whether the proposed development would comprise a sustainable development for which a presumption in favour of would apply, and;

   ii) Whether the proposal would make adequate provision in respect of local infrastructure with specific regard to affordable housing, education and health.

Reasons

6. The appeal site comprises two parcels of land; one that would be used for the doctors surgery and the other for the proposed 25 dwellings. The Council's Officer Report indicates that whilst these are physically separate from one another they effectively represent an overall extension to the approved Admirals Farm development for 50 dwellings. Physically both parcels of land appear as undeveloped agricultural land. Both lie outside of the settlement development boundaries as defined by Policy QL1 of the *Tendring Local Plan 2007* (TLP), and therefore are technically in the 'countryside' for planning policy purposes.

7. The Council's reason for refusal details various factors which it considers needs to be addressed for the proposal to be considered as sustainable development. In particular, it refers to the *National Planning Policy Framework* (the Framework) and the need to actively manage patterns of growth to make the fullest possible use of public transport and to focus development in locations which are or can be made sustainable.

8. In seeking to achieve this aim the Council has a settlement hierarchy, which defines Great Bentley as a village (and as a 'rural service centre' in the emerging local plan). It is therefore a location which the Council seeks to concentrate new development; as shown by the development of 50 dwellings on the Admirals Farm site directly adjoining the appeal site.

9. The Council is concerned that Great Bentley has already been subject to a high level of growth, with permission granted for around a 35% increase in the village's housing stock. The concern is that permitting further growth within the settlement will result in further strains on traffic and services, for example. In terms of traffic, there is little technical evidence before me that demonstrates that the proposal would result in a materially harmful increase in traffic movements. I am reinforced in this view by the fact that no objections were raised by the local highways authority.

10. In terms of access to services, it seems peculiar that a development of 50 dwellings directly to the south of the appeal site is sustainable in all respects, but a development for 25 dwellings on the other side of the settlement development boundary would unsustainable. Whether the appeal site is on one side or the other of a settlement boundary line is not definitive of the sustainability of the proposal.

11. The proposal in this case would be directly adjacent to a settlement which the Council's own adopted and emerging plans have identified is a rural service centre. By identifying the settlement as such, it would be very odd to then reject any new development in or near to such a settlement. Indeed the identification of the settlement as one which development should be focussed

within the district's rural area suggest that it provides a number of day-to-day services, or is likely to do so through existing planned and committed growth.

12. In terms of impact on existing services, the appellant has provided a legal agreement (which I consider under the second main issue) which would secure monies for local infrastructure. This process, together with the CIL Regulations, permits the Council to secure monies towards local infrastructure from demands placed on them by a development. I have been provided with very little cogent evidence which confirms that the Council's concerns over such matters are not resolvable by such means.

13. I acknowledge that the appeal site comprises elements of Grade 2, 3a and 3b agricultural land. The land graded at grades 2 and 3a therefore fall within the category of the Best and Most Versatile Agricultural Land (BMVAL) as defined by the glossary of the Framework. Paragraph 112 of the Framework indicates that local planning authorities should take into account the economic and other benefits of BMVAL and where significant development of such land is demonstrated to be necessary land of poorer quality should be sought in preference to that of higher quality.

14. The Council's reason for refusal indicates that the proposal would result in the loss of productive agricultural land. However, it is unclear as to how much land of such grade is available within the area. In any case, the proposal in this case is fairly modest in scale, seeking 25 dwellings and a doctors surgery. This is within the context of an area that is currently unable to demonstrate a five year supply of deliverable housing sites. In such circumstances, I do not find that the proposal in this case would represent a significant development for the purposes of Paragraph 112 of the Framework.

15. Indeed, there appears to be little of any substance as to why the proposal would be an unsustainable development beyond the fact that it does not lie within the settlement boundary. Whilst this would be a 'technical' breach of the saved policy QL1 of the TLP, the purpose of the development plan as a whole is to avoid harm, not specifically to prevent development per se. In the absence of identifiable harm in this case, I find that the proposal would accord with the development plan when considered as a whole in respect of the first main issue. For the aforesaid reasons, I therefore conclude that the proposal would comprise a sustainable development for which a presumption in favour of would apply.

Local infrastructure

16. The appellant has submitted a legal agreement under Section 106 of the TCPA (known as unilateral undertaking or S106) dated 27 September 2017. This secures either monies or land for open space, health care or affordable housing.

17. Policy HG4 of the TLP requires that up to 40% of new dwellings on schemes of more than 5 units should be affordable housing. The Council have directed me to emerging draft Policy LP5 of the *Tendring District Local Plan Preferred Options Consultation Document* 2016, which seeks for developments of 10 dwellings a provision of 30% affordable housing. The submitted legal agreement would secure 30% of the proposed dwellings as affordable. This would be lower than the adopted policy position.

18. However, whilst not yet fully examined or tested by examination, the emerging Policy is based upon more recent data from the Council's evidence base. The application of the 30% level is therefore a pragmatic approach in this case and should therefore be applied here. The provision of affordable housing in an area that currently has a shortfall in housing provision should be afforded significant weight in favour of the proposal.

19. Policy QL12 of the TLP seeks to ensure that planning obligations are sought to make the development acceptable. Policy COM6 of the TLP seeks the provision of public open space for developments of more than 1.5 hectares. Policy COM24 of the TLP seeks to ensure that proposals support existing health infrastructure. The legal agreement would make provision for both public open space and health services in order to address the impact arising from new occupiers. The obligations are therefore 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. The submitted legal agreement would therefore fulfil the tests set out in the CIL Regulations and Paragraph 204 of the Framework and should be taken into account if granting permission.

20. No obligation has been submitted in respect of education contributions. The Council's reason for refusal refers to Policy COM26 of the TLP, which seeks to ensure that developments for 12 or more dwellings make provision for education. However, the local education authority confirmed by an email dated 19 January 2017 that such contributions were not sought in light of the pooling restrictions. Their omission from the submitted unilateral undertaking does not therefore weigh against or in favour of the proposal.

21. Concerns have been raised by interested parties over the lack of a formal agreement between appellant and the NHS in relation to the proposed doctors surgery. The appellant has addressed the direct impact arising from the development through the submission of a legal agreement securing monies towards improving the existing doctor's surgery as detailed above. With regard to the proposed doctors surgery, were this to be secured through a planning obligation it would need to fulfil the three tests set out in Paragraph 204 of the Framework and the CIL Regulations. However, in this case I do not consider that securing such an obligation is necessary to make the development acceptable in planning terms. As such, its omission from the unilateral undertaking does not weigh either for or against the proposal.

Other Matters

22. A number of concerns have been raised by interested parties in addition to those considered above. However, I have considered these, including the planning history of the site, potential traffic impact, sustainability of the settlement and loss of agricultural land for example, within the context of the main issues. I do not find that these, whether considered individually or cumulatively result in an unacceptable impact which would point to the dismissal of the appeal.

Conditions

23. The Council has suggested a number of conditions. In considering these, subject to any relevant rephrasing, I have taken into account Paragraph 206 of

the Framework and the Planning Practice Guidance in respect of the use of planning conditions.

24. Conditions requiring the submission of reserved matters, that the scheme relates to no more 25 dwellings, that details are in broad conformity to outline drawings, landscaping details and their retention, and the submission of material details are necessary and reasonable to provide certainty and for the avoidance of doubt.

25. Conditions relating to access, vision splays, highway layout and travel information packs are necessary in the interests of highway safety. The submission of a construction management plan is reasonable in order to manage construction activities on and near to the site.

26. Details of surface water measures are necessary in order to minimise the risk of localised flooding. Details of tree protection measures and ecological mitigation and management are necessary in order to protect and promote biodiversity.

27. An Archaeology condition is reasonable in order to properly record any finds that may be present on the appeal site. Lastly, a condition requiring the ability to connect to a fibre optic connection is necessary in order to ensure that future occupiers are able to benefit from the ability to work from home and access high speed web-based services more generally

Overall Conclusion

28. Planning law is clear in that Section 38(6) of the *Planning and Compulsory Act 2004*, as amended, sets out that in the determination of proposals, this must be made in accordance with the development plan, unless material considerations indicate otherwise. In this case, the proposal would accord with the policies of the development plan when read as a whole; even though there would be a technical breach in the policies focusing development to within settlement boundaries.

29. Paragraph 14 of the Framework (engaged by Paragraph 49 of the Framework) indicates that the presumption in favour of sustainable development means for decision-making approving development that accords with the development plan without delay. I have found that the proposal would accord with the development plan.

30. The Council is currently unable to demonstrate a five year supply of deliverable housing sites. In the absence of any identified adverse impacts, I find that the benefits are not outweighed by any. Accordingly, the Framework, as a material consideration, indicates that permission should be granted.

31. In this case, the proposal would accord with the policies of the development plan and there are no material considerations that indicate otherwise. For the reasons given above, and having taken all matters raised into account including the concerns raised by interested parties, I conclude that the appeal should be allowed.

Cullum J A Parker

INSPECTOR

Appendix A – List of Conditions

1) No development shall be commenced until plans and particulars of 'the reserved matters' relating to the access, appearance, layout, landscaping, 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.

2) 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.

3) 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.

4) The development hereby permitted shall be carried out in accordance with Location Plan No. 3684 – 0001 REV P01.

5) The reserved matters shall be in general conformity with the Proposed Site Block Plan 3684 – 0011 Rev P01.

6) The maximum number of dwellings to be contained in the development shall be 25 (twenty-five).

7) No development shall commence until the junction with Heckford Road is completed and providing appropriate visibility splays in accordance with details submitted to and approved in writing by the local planning authority.

8) Any carriageways within the appeal site should be no less than 5.5 metres in width, with two footways each a minimum of 2.0 metres in width.

9) All carriageways should be provided at 5.5m between kerbs or 6.0m where vehicular access is taken but without kerbing.

10) No development shall commence until details of all off-street parking provision is submitted to and approved in writing by the local planning authority. Such information shall be in accordance with the details contained within the Council's current adopted Parking Standards, or any such replacement standard. Thereafter such provision shall be implemented as approved.

11) Prior to occupation of the development, details of the provision and implementation of a Residential Travel Information Pack for sustainable transport shall be submitted to and approved in writing by the local planning authority. Such packs shall include six one day travel vouchers for use with the relevant local public transport operator.

12) No development shall take place, including any ground works or works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:

    i. details of the use of noise barriers;

    ii. construction of houses;

iii. selection and use of machinery to operate on site;

iv. details of any piling works and methods and techniques to be employed;

v. the parking of vehicles of site operatives and visitors

vi. measures to avoid nuisance from dust and litter emissions;

vii. the disposal of waste materials;

viii. loading and unloading of plant and materials;

ix. storage of plant and materials used in constructing the development, and;

xi. details of wheel and under body washing facilities, and

xii. details of hours of operation.

13) No development shall commence until a *Landscape and Public Open Space Management Plan* including a lighting strategy, long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas has been submitted to and approved, in writing, by the local planning authority. The Landscape and Public Open Space Management Plan so approved shall be carried out in accordance with the details and timescales to be contained in that document.

14) All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the landscaping details required to be submitted and approved under condition 1 above shall be carried out during the first planting and seeding season 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, or 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.

15) No development shall commence until details of tree protection measures (in accordance with BS5837 or equivalent or replacement standard) , 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 and retained until construction is completed.

16) Prior to the commencement of development, a detailed surface water drainage scheme for the site, based on 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 mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

17) Prior to commencement of the development details of 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 shall be submitted to and approved in writing by the local planning authority.

18) The person or organisations responsible for the maintenance plan set out in condition 17 shall complete and retain yearly maintenance logs of maintenance which should be carried out in accordance with any approved maintenance plan. These must be available for inspection upon a request for inspection by the local planning authority.

19) No development shall take place on the site until a Written Scheme of Archaeological Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include:

a. the programme, including phasing, and methodology of site investigation and recording;

b. the programme for post investigation assessment;

c. the provision to be made for analysis of the site investigation and recording;

d. the provision to be made for publication and dissemination of the analysis and records of the site investigation;

e. the provision to be made for archive deposition of the analysis and records of the site investigation; and

f. the nomination of a competent person or persons/organisation(s) to undertake the works set out within the Written Scheme of Investigation.

20) No phase of development shall commence until an Ecological Mitigation Scheme and Management Plan for that particular phase 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, and;

ii) A management plan to demonstrate how biodiversity within the site will be encouraged by the development.

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.

21) No development shall commence until precise details of lighting, refuse storage/collection points; the manufacturer and types and colours of the external facing and roofing materials; and all areas of hardsurfacing to be used in the construction have been submitted to and approved, in writing, by the local planning authority. Such lighting, refuse points and materials so approved shall be those used in the development.

22) The development hereby permitted shall not be occupied until a fibre optic broadband connection installed on an open access basis and directly accessed

from the nearest suitable exchange, incorporating the use of resistant tubing, has been installed at the site, in accordance with details that shall be submitted to and approved in writing by the local planning authority.

If it is not possible to achieve this standard of connection, and this can be evidenced through consultation with local internet providers that this would not be possible, practical or economically viable, details of an alternative superfast wireless service should be submitted to and approved in writing by the local planning authority. Thereafter the details shall be implemented as approved.

---END OF CONDITIONS---