



Appeal Decision

Site visit made on 24 July 2019

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 22 August 2019

Appeal Ref: APP/P1560/W/19/3226562

Heath Road, Chisbon Heath, St Osyth CO16 9BS

- 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 and Mrs E Greig against the decision of Tendring District Council.
 - The application Ref 18/01669/FUL, dated 2 October 2018, was refused by notice dated 18 December 2018.
 - The development proposed is a residential development comprising 2 detached dwelling houses, garages, landscaping and access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellants submitted two completed Unilateral Undertakings (UUs) one dated 21 February 2019, in relation to contributions towards public open space and one dated 8 July 2019, in relation to contributions towards recreational disturbance, avoidance and mitigation. Each is accompanied by a plan showing the sites red line boundary. The Council has had the opportunity to comment. I have taken account of the UUs in my decision.
3. Following the Council's determination of the application, a revised version of the National Planning Policy Framework (the Framework) was published in February 2019. The parties have had the opportunity to make comments on the revisions to the Framework as part of the appeal process.
4. The Tendring District Local Plan 2013-2033 and Beyond (the Emerging Local Plan) has been published but has yet to be found sound. Therefore, it attracts limited weight as a material consideration.

Main Issues

5. The main issues are: -
 - Whether the site is a suitable location for two dwellings having regard to local policy for the delivery of housing and accessibility to everyday local facilities and services by a range of modes of transport, and: -
 - Whether the proposed development makes suitable provision for play.

Reasons

Suitability of the location of the site

6. The appeal site is an open field on the northern side of Heath Road. It lies between two existing dwellings amongst a small cluster of residential development known as Chisbon Heath. Heath Road is a single carriageway road without footway provision and is subject to a 60 MPH speed limit.
7. The site is situated outside any settlement boundary and is defined as countryside by Saved Policy QL1 of the Tendring District Local Plan -2007- (the Local Plan). It is therefore in the countryside for planning purposes where development will only be permitted subject to the exceptions set out in the Council's countryside policies. No argument has been made that these exceptions apply.
8. Saved Policy QL1 of the Local Plan sets out the Council's Spatial Strategy and is broadly consistent with the aims of the Framework of promoting sustainable development in rural areas by requiring housing to be located where it will enhance or maintain the vitality of rural communities as set out in Paragraph 78 of the Framework. Emerging Policy SPL1 of the Emerging Local Plan seeks to establish a development hierarchy in a similar way to Saved Policy QL1.
9. Paragraph 78 of the Framework states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities and that Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. The proposal would have minor benefits through the provision of housing and investment in the local community. The main considerations in this appeal are whether the proposed development would be suitably located.
10. Chisbon Heath contains a very limited range of services and the site is located a significant distance from the nearest centre that would provide a range of services for the day-to-day needs of residents, in Clacton-on-Sea. The unlit nature of the intervening roads, with their lack of footways and vehicular speeds would be likely to deter pedestrians and cyclists, particularly after dark, with children or during inclement weather and so residents of the site would almost certainly rely very heavily on the private car to meet their day-to-day needs. A bus service passes along Heath Road, providing a 'hail and ride' service. However I have little information before me regarding destinations and frequency to demonstrate that this would provide a realistic alternative to the use of the private car to cater for the day-to-day needs of residents.
11. The Framework recognises that sustainable transport solutions will vary between urban and rural areas and that rural housing development in smaller settlements can enhance or maintain the vitality of rural communities. The appeal site lies in an area of only sporadic development, where dwellings form small loose groups or hamlets with no services within them requiring, in all likelihood, a trip into the local town to satisfy their day-to-day needs. Thus it could not be said that the development would contribute meaningfully to the vitality of villages outside the town.
12. Further, there is no meaningful alternative to using the private car to satisfy these needs. With, for such a limited scale of development, no real scope to

improve connexions for walking, cycling or public transport, dependency upon private motor vehicles would be almost total.

13. I conclude that the appeal site would not be a suitable location for a dwelling, having regard to accessibility to shops and services. The development is therefore contrary to the provisions of Saved Policy QL1 of the Local Plan. Similarly the proposed development would also be contrary to Emerging Policy SPL1 of the Emerging Local Plan.

Provision for play

14. Policy COM6 of the Local Plan requires that "For residential development under 1.5 hectares in size developers should contribute financially to meet the open space requirements of the development in proportion to the number and size of dwellings built". The Council has identified a shortfall in local play area provision and a requirement under for contributions to offset this deficit. Contributions would be spent to provide additional play facilities in Cowley Park on Mill Street in St Osyth.
15. Subsequent to the determination of the application the appellants submitted a Unilateral Undertaking which would make provision for the payment of these contributions. In the absence of any further comment from the Council I consider that the UU has been properly executed and addresses the additional requirement for public open space provision identified by the Council.
16. I therefore find that the proposed development makes suitable provision for play and is therefore in compliance with Policy COM6 of the Local Plan.

Other Matters

17. The site lies within the zone of influence of the Colne Estuary Special Protection Area (SPA) and RAMSAR site and is in a location where occupiers of the development are likely to use the SPA for recreational purposes. Thus, I cannot rule out the possibility that the development would have adverse effects on the integrity of the designated area, either alone or in combination with other planned development. In those circumstances, having regard to the Habitats Regulations, planning permission should not be granted unless an Appropriate Assessment (AA) has been undertaken to assess the likely effects. Such an assessment is necessary regardless of the status of the existing or emerging policies of the development plan.
18. Following recent case law, potential mitigation cannot be taken into account when determining whether an AA is required but may be considered if an AA has been undertaken and determined that the development would harm the integrity of the SAC. The appellants have provided a UU which would provide contributions towards the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). However, as I am dismissing for other reasons it is not necessary for me to consider this matter further as it could not change the outcome of this appeal.
19. The appellants have drawn my attention to the recently permitted development of an 'aspirational house' on the site adjacent to the proposal. I have little information regarding the planning history of this development upon which to assess the comparability of the two developments. I have, in any case, determined this appeal on its own merits.

20. I note that the appellants have expressed frustration with the way in which the Local Planning Authority handled the application. However, this is a matter between the parties involved and would not alter the outcome of this appeal.

Planning Balance

21. The parties agree that the Council is unable to demonstrate a five year housing land supply. Therefore Paragraph 11 d) of the Framework applies.
22. The development would provide benefits in terms of delivering two additional homes to boost local housing supply. Paragraph 68 provides some support for development of limited scale, as these have potential to be built-out quickly. However, there is no proposed timescale for development in the evidence before me. There would be benefits to the local economy in terms of short term employment in the construction industry and longer term support to local shops and businesses. It is likely that the future occupants will participate in local events and societies.
23. It is argued that the development constitutes an effective use of land which is currently underutilised and has no beneficial purpose. However the Framework recognises the intrinsic character and beauty of the countryside and I have little evidence before me to demonstrate that the land currently has no beneficial purpose or does not contribute to protecting and enhancing our natural environment.
24. The appellant has proposed that the development would help to support local schools and facilities. However, I have little evidence before to demonstrate the need of local schools and facilities for additional support. Taken together, and given the scale of the development, these benefits carry limited weight.
25. Given the location of the site and the lack of access to safe walking and cycling routes and public transport it is likely that future occupants of the development would be heavily reliant on private motor vehicles to access local shops and services. This is a significant factor weighing against the scheme.
26. In conclusion the identified harm would significantly and demonstrably outweigh the limited benefits provided by the scheme when considered against development plan policies and the Framework when read as a whole.

Conclusion

27. For the reasons given above, and having regard to all other matters raised, the appeal is dismissed.

I Dyer

INSPECTOR